Fact Sheet

Consent and Advance Care Directive Fast Facts

On 1 July 2014, the *Advance Care Directives Act 2013*, as well as changes to the *Consent to Medical Treatment and Palliative Care Act 1995* and the *Guardianship and Administration Act 1993* came into play in SA.

Key points to know about these changes:

> There is a new Advance Care Directive Form on which a person can appoint a substitute decision maker and/or write instructions about their future healthcare, and their wishes for their living arrangements and personal matters.

> ➢ Enduring Powers of Guardianship, Medical Powers of Attorney and Anticipatory Directions completed before 1 July, 2014 still have legal effect as if they are an Advance Care Directive under the new Act, but according to their terms (for example, the protections, obligations and dispute resolution processes apply to any previous existing documents).

> To complete an Advance Care Directive (ACD), a person must be over 18 and they must be able to understand what an ACD is, what it does, when it will be used and it must be their own decision to complete one.

> Advance Care Directives apply at any time that the person has impaired decision-making capacity in relation to the decision – not just at end of life.

> It is presumed the person has decision-making capacity to make their own decision/s unless there is evidence to the contrary. See *Assessing decision-making* capacity fact sheet for tips on how to assess a person's decision-making capacity.

> A key principle of these changes is that everyone making decisions for a person with impaired decision-making capacity must act as if "they are in the person's shoes" and make decisions as the person would have done in the same circumstances.

> A refusal of health care and/or medical treatment which is relevant to the situation must be complied with (binding refusal).

> Health practitioners are not obligated to comply with a refusal of health care if the situation is urgent **and** uncertain for example there is no time to work out if the refusal applies or there is no one close to the person who can clarify the person's intent/provide consent.

  > Wherever possible, a person's wishes and values must be taken into account when decisions are being made (non-binding requests).

> There are protections for health practitioners, ambulance officers, paramedics, substitute decision-makers and others, such as aged care or community care providers for complying with an ACD in good faith and without negligence.

> There is no requirement to provide life-sustaining treatment that will not benefit the person if they are in the terminal phase of an illness. Consent is not required for the decision to withdraw or withhold life-sustaining treatment but such decisions should be discussed with the person or their

> There is a clear hierarchy of who to obtain consent from when a person's decision making capacity is impaired see Capacity Assessment Fact Sheet and Consent Flow chart).

> Enduring Power of Guardianship, Anticipatory Directions and Medical Power of Attorney still have legal effect as if they were made under the Advance Care Directives Act 2013, which means the protections and the new dispute resolution processes apply.

  > The new Advance Care Directive Form, if the person has one, supersedes any pre-existing forms. The most recently dated form is the one which is in force and can be relied upon.

> There is a simplified dispute resolution process for all health care decision disputes and disputes about decisions under an Advance Care Directive that is provided by the Public Advocate (24/7) should disputes not be resolved at the using local procedures.

> An Advance Care Directive can't be used to demand health care and for anything illegal such as euthanasia, assisted suicide or refusal of mandatory treatment such as mental health orders.

For more information visit:

www.advancecaredirectives.sa.gov.au

For more information

www.ausgoal.gov.au/creative-commons

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