

South Australia

Consent to Medical Treatment and Palliative Care Act 1995

An Act to deal with consent to medical treatment; to regulate medical practice so far as it affects the care of people who are dying; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Consent to Medical Treatment and Palliative Care Act 1995*.

3—Objects

The objects of this Act are—

- (a) to make certain reforms to the law relating to consent to medical treatment—

- (i) to allow persons of or over the age of 16 years to decide freely for themselves on an informed basis whether or not to undergo medical treatment; and
- (iii) to provide for the administration of emergency medical treatment in certain circumstances without consent; and
- (b) to provide for the medical treatment of people who have impaired decision-making capacity; and
- (c) to allow for the provision of palliative care, in accordance with proper standards, to people who are dying and to protect them from medical treatment that is intrusive, burdensome and futile.

4—Interpretation

- (1) In this Act, unless the contrary intention appears—

administration of medical treatment includes the prescription or supply of drugs;

advance care directive means an advance care directive under the *Advance Care Directives Act 2013* that is in force;

child means a person under 16 years of age;

decision, of the Tribunal, has the same meaning as in the *South Australian Civil and Administrative Tribunal Act 2013*;

dentist means a person registered under the *Health Practitioner Regulation National Law*—

- (a) to practise in the dental profession as a dentist (other than as a student); and
- (b) in the dentists division of that profession;

guardian means a person acting or appointed under any Act or law as the guardian of another;

impaired decision-making capacity, in respect of a particular decision—see subsection (2);

internal review means a review under section 70 of the *South Australian Civil and Administrative Tribunal Act 2013*;

life sustaining measures means medical treatment that supplants or maintains the operation of vital bodily functions that are temporarily or permanently incapable of independent operation, and includes assisted ventilation, artificial nutrition and hydration and cardiopulmonary resuscitation;

medical practitioner means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student) and includes a dentist;

medical treatment means the provision by a medical practitioner of physical, surgical or psychological therapy to a person (including the provision of such therapy for the purposes of preventing disease, restoring or replacing bodily function in the face of disease or injury or improving comfort and quality of life) and includes the prescription or supply of drugs;

Note—

See also section 14, which extends this definition for the purposes of Part 2A to include other forms of health care.

palliative care means measures directed at maintaining or improving the comfort of a patient who is, or would otherwise be, in pain or distress;

parent, of a child, includes—

- (a) a step-parent; and
- (b) an adult who acts *in loco parentis* in relation to the child;

persistent vegetative state includes post-coma unresponsiveness and a minimally responsive state;

Public Advocate means the person holding or acting in the office of Public Advocate under the *Guardianship and Administration Act 1993*;

representative, of a patient, means a person authorised under this or any other Act or law to make decisions about the administration of medical treatment of the relevant kind to the patient;

substitute decision-maker has the same meaning as in the *Advance Care Directives Act 2013*;

terminal illness means an illness or condition that is likely to result in death;

terminal phase of a terminal illness means the phase of the illness reached when there is no real prospect of recovery or remission of symptoms (on either a permanent or temporary basis);

Tribunal means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*.

- (2) For the purposes of this Act, a person will be taken to have **impaired decision-making capacity** in respect of a particular decision if—
- (a) the person is not capable of—
 - (i) understanding any information that may be relevant to the decision (including information relating to the consequences of making a particular decision); or
 - (ii) retaining such information; or
 - (iii) using such information in the course of making the decision; or
 - (iv) communicating his or her decision in any manner; or
 - (b) the person is, by reason of being comatose or otherwise unconscious, unable to make a particular decision about his or her medical treatment.

- (3) For the purposes of this Act—
- (a) a person will not be taken to be incapable of understanding information merely because the person is not able to understand matters of a technical or trivial nature;
 - (b) a person will not be taken to be incapable of retaining information merely because the person can only retain the information for a limited time;
 - (c) a person may fluctuate between having impaired decision-making capacity and full decision-making capacity;
 - (d) a person's decision-making capacity will not be taken to be impaired merely because a decision made by the person results, or may result, in an adverse outcome for the person.
- (4) For the purposes of this Act, a medical practitioner is entitled to presume that a person who purports to be in a close and continuing relationship with another person is in such a relationship unless the medical practitioner knew, or ought reasonably to have known, that the 2 persons were not in such a relationship.
- (5) For the purposes of this Act, a medical practitioner is entitled to presume that a person who purports to have a particular relationship to another person (whether the relationship is based on affinity or consanguinity or otherwise) does have such a relationship unless the medical practitioner knew, or ought reasonably to have known, that the person did not have such a relationship to the other person.

4A—References to provision of medical treatment etc to include withdrawal etc of medical treatment

Unless the contrary intention appears, a reference in this Act to the administration of medical treatment to a person will be taken to include a reference to the withdrawal, or withholding, of medical treatment to the person (including, to avoid doubt, the withdrawal or withholding of life sustaining measures).

4B—Consent not required for withdrawal etc of medical treatment

Nothing in this Act operates to require the consent of a person to be given before medical treatment (including, to avoid doubt, life sustaining measures) can be withdrawn or withheld.

Part 2—Consent to medical treatment generally

Division 1—Consent generally

6—Legal competence to consent to medical treatment

A person of or over 16 years of age may make decisions about his or her own medical treatment as validly and effectively as an adult.

Division 4—Medical treatment of children

12—Administration of medical treatment to a child

A medical practitioner may administer medical treatment to a child if—

- (a) the parent or guardian consents; or
- (b) the child consents and—
 - (i) the medical practitioner who is to administer the treatment is of the opinion that the child is capable of understanding the nature, consequences and risks of the treatment and that the treatment is in the best interest of the child's health and well-being; and
 - (ii) that opinion is supported by the written opinion of at least one other medical practitioner who personally examines the child before the treatment is commenced.

Division 5—Emergency medical treatment

13—Emergency medical treatment

- (1) Subject to this section, a medical practitioner may lawfully administer medical treatment to a person (the *patient*) if—
 - (a) the patient is incapable of consenting (whether or not the person has impaired decision-making capacity in respect of a particular decision); and
 - (b) the medical practitioner who administers the treatment is of the opinion that the treatment is necessary to meet an imminent risk to life or health and that opinion is supported by the written opinion of another medical practitioner who has personally examined the patient; and
 - (c) the patient (if of or over 16 years of age) has not, to the best of the medical practitioner's knowledge, refused to consent to the treatment; and
 - (d) the medical practitioner proposing to administer the treatment has made, or has caused to be made, reasonable inquiries to ascertain whether the patient (if the patient is 18 or more years of age) has given an advance care directive.
- (1a) Subject to this section, a medical practitioner may lawfully administer medical treatment to a person (the *patient*) despite a provision of an advance care directive given by the patient comprising a refusal of medical treatment if—
 - (a) the patient is incapable of consenting (whether or not the patient has impaired decision-making capacity in respect of a particular decision); and
 - (b) the medical practitioner who administers the treatment is of the opinion that the treatment is necessary to meet an imminent risk to life or health and that opinion is supported by the written opinion of another medical practitioner who has personally examined the patient; and
 - (c) the medical practitioner who administers the treatment reasonably believes that the provision of the advance care directive is not intended to apply—
 - (i) to treatment of the kind proposed; or

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- (ii) in the circumstances in which the proposed medical treatment is to be administered; and
 - (d) it is not reasonably practicable in the circumstances of the case to have the matter dealt with under Part 7 of the *Advance Care Directives Act 2013*.
- (2) A supporting opinion is not necessary under subsection (1)(b) or (1a)(b) if in the circumstances of the case it is not practicable to obtain such an opinion.
- (2a) Inquiries under subsection (1)(d) need not be made if in the circumstances of the case it is not reasonably practicable to do so.
- (3) If—
- (a) the patient has given an advance care directive; and
 - (b) the medical practitioner proposing to administer the treatment is aware of that fact (whether on the basis of inquiries made under this section or otherwise); and
 - (c) a substitute decision-maker appointed under the advance care directive is empowered or authorised to make decisions relating to the administration of such treatment and is reasonably available to make such a decision,
- the medical treatment must not be administered without the consent of the substitute decision-maker.

Note—

This provision simply requires the substitute decision-maker to be given the opportunity to make the decision about consent if he or she is available—there may also be other provisions of the advance care directive in relation to the treatment that are relevant, and need to be complied with, in the circumstances.

- (4) If no such substitute decision-maker is available and a guardian of the patient is available, the medical treatment may not be administered without the guardian's consent.
- (4a) If neither a substitute decision-maker nor a guardian of the patient is available, but a person responsible for the patient (within the meaning of Part 2A) is reasonably available and willing to consent to the administration of the medical treatment, the medical treatment may not be administered without the consent of the person responsible for the patient (given in accordance with Part 2A).
- (5) If the patient is a child, and a parent or guardian of the child is available to decide whether the medical treatment should be administered, the parent's or guardian's consent to the treatment must be sought but the child's health and well-being are paramount and if the parent or guardian refuses consent, the treatment may be administered despite the refusal if it is in the best interests of the child's health and well-being.

Part 2A—Consent to medical treatment if person has impaired decision-making capacity

14—Interpretation

(1) In this Part—

health care means any care, service, procedure or treatment provided by, or under the supervision of, a health practitioner for the purpose of diagnosing, maintaining or treating a physical or mental condition of a person;

health practitioner means a person who practises 1 or more of the following:

- (a) a health profession (within the meaning of the *Health Practitioner Regulation National Law (South Australia)*);
- (b) any other profession or practice declared by the regulations to be included in the ambit of this definition;

medical practitioner, in respect of particular health care, includes a health practitioner practising in the relevant profession or practice;

medical treatment includes health care;

patient means a person to whom medical treatment is, or is proposed to be, administered pursuant to this Part;

person responsible for a patient means—

- (a) if a guardian has been appointed in respect of the patient, and his or her powers as guardian have not been limited so as to exclude the giving of a consent contemplated by this Part and he or she is available and willing to make a decision as to such consent—that guardian; or
- (b) if paragraph (a) does not apply, but a prescribed relative of the patient who has a close and continuing relationship with the patient is available and willing to make a decision as to a consent contemplated by this Part—that prescribed relative; or
- (c) if paragraphs (a) or (b) do not apply, but an adult friend of the patient who has a close and continuing relationship with the patient is available and willing to make a decision as to a consent contemplated by this Part—that friend; or
- (d) if paragraphs (a), (b) or (c) do not apply, but an adult who is charged with overseeing the ongoing day-to-day supervision, care and well-being of the patient is available and willing to make a decision as to a consent contemplated by this Part—that person; or
- (e) if none of the preceding paragraphs apply, or otherwise with the permission of the Tribunal—the Tribunal on the application of—
 - (i) a prescribed relative of the patient; or
 - (ii) the medical practitioner proposing to give the treatment; or
 - (iii) any other person who the Tribunal is satisfied has a proper interest in the matter;

prescribed relative—the following persons are prescribed relatives of a patient:

- (a) a person who is legally married to the patient;
 - (b) an adult domestic partner of the patient (within the meaning of the *Family Relationships Act 1975* and whether declared as such under that Act or not);
 - (c) an adult related to the patient by blood or marriage;
 - (d) an adult related to the patient by reason of adoption;
 - (e) an adult of Aboriginal or Torres Strait Islander descent who is related to the patient according to Aboriginal kinship rules or Torres Strait Islander kinship rules (as the case requires).
- (2) If a man and woman are married according to Aboriginal tradition, they will be regarded as legally married for the purposes of this Part.

14A—Application of Part

- (1) This Part does not apply to, or in relation to, a child.

Note—

Section 12 sets out who can consent to the administration of medical treatment (other than prescribed treatment) to a child.

- (2) This Part does not apply to, or in relation to, a person who has given an advance care directive to the extent that—
- (a) a substitute decision-maker has been appointed under the advance care directive who is authorised to make decisions relating to the administration of medical treatment of the relevant kind to the patient; or
 - (b) the advance care directive makes specific provision in respect of the administration of medical treatment of the relevant kind to the patient.
- (3) This Part does not apply to, or in relation to, prescribed treatment (within the meaning of the *Guardianship and Administration Act 1993*).

Note—

Under the *Guardianship and Administration Act 1993*, prescribed treatments include terminations of pregnancy and sterilisations.

- (4) Nothing in this Part limits the operation of section 13.

14B—Consent of person responsible for patient effective in certain circumstances

- (1) Where it is proposed to administer medical treatment to a patient with impaired decision-making capacity in respect of a decision that is required in relation to the medical treatment, a consent given by a person responsible for the patient to the administration of the proposed medical treatment—
- (a) will be taken to be a consent given by the patient; and
 - (b) will be taken to have the same effect for all purposes as if the patient gave the consent.

- (2) The regulations may make further provision in relation to the giving of consent by a person responsible for a patient for the purposes of this Act (including by limiting the kinds of medical treatment to which a specified class of person responsible can consent).
- (3) The effectiveness of a consent given by a person responsible for a patient is not affected merely because insufficient inquiries were made to locate a person with higher responsibility for the patient before the consent was given (as contemplated by the hierarchy in the definition of *person responsible* in section 14).
- (4) Consent to the administration of particular medical treatment will, for all purposes, be taken to have been given by the patient if—
 - (a) the medical treatment was administered with the purported consent of a person who represented to the medical practitioner that he or she was a person responsible for the patient; and
 - (b) the medical practitioner did not know and could not reasonably be expected to have known that the person was not, in fact, a person responsible for the patient.

14C—Person responsible for patient to make substituted decision

A decision of a person responsible for a patient to give, or to refuse to give, consent under this Part must, as far as is reasonably practicable, reflect the decision that the patient would have made in the circumstances had his or her decision-making capacity not been impaired.

Note—

In cases where the patient has given an advance care directive under which no substitute decision-maker is appointed, but the patient's wishes or instructions in relation to treatment of the relevant kind is recorded, it may nevertheless be necessary to give effect to those wishes or instructions—see Part 5 of the *Advance Care Directives Act 2013*.

14D—Person must not give consent unless authorised to do so

A person who is not a person responsible for a particular patient is guilty of an offence if he or she, knowing that he or she is not a person responsible for the patient or being recklessly indifferent as to whether or not he or she is a person responsible for the patient—

- (a) purports to give a consent under this Part in respect of the patient; or
- (b) represents to a medical practitioner that he or she is a person responsible for the patient.

Maximum penalty: Imprisonment for 2 years.

Part 3—Provisions governing medical practice

Division 1—Medical practice generally

15—Medical practitioner's duty to explain

A medical practitioner has a duty to explain to a patient (or the patient's representative), so far as may be practicable and reasonable in the circumstances—

- (a) the nature, consequences and risks of proposed medical treatment; and
- (b) the likely consequences of not undertaking the treatment; and
- (c) any alternative treatment or courses of action that might be reasonably considered in the circumstances of the particular case.

16—Protection for medical practitioners etc

A medical practitioner responsible for the treatment or care of a patient, or a person participating in the treatment or care of the patient under the medical practitioner's supervision, incurs no civil or criminal liability for an act or omission done or made—

- (a) with the consent of the patient or the patient's representative or without consent but in accordance with an authority conferred by this Act or any other Act; and
- (b) in good faith and without negligence; and
- (c) in accordance with proper professional standards of medical practice; and
- (d) in order to preserve or improve the quality of life.

Division 2—The care of people who are dying

17—The care of people who are dying

- (1) A medical practitioner responsible for the treatment or care of a patient in the terminal phase of a terminal illness, or a person participating in the treatment or care of the patient under the medical practitioner's supervision, incurs no civil or criminal liability by administering medical treatment with the intention of relieving pain or distress—
 - (a) with the consent of the patient or the patient's representative; and
 - (b) in good faith and without negligence; and
 - (c) in accordance with proper professional standards of palliative care, even though an incidental effect of the treatment is to hasten the death of the patient.
- (2) A medical practitioner responsible for the treatment or care of a patient in the terminal phase of a terminal illness, or a person participating in the treatment or care of the patient under the medical practitioner's supervision—
 - (a) is under no duty to use, or to continue to use, life sustaining measures in treating the patient if the effect of doing so would be merely to prolong life in a moribund state without any real prospect of recovery or in a persistent vegetative state (whether or not the patient or the patient's representative has requested that such measures be used or continued); and

- (b) must, if the patient or the patient's representative so directs, withdraw life sustaining measures from the patient.
- (3) For the purposes of the law of the State—
- (a) the administration of medical treatment for the relief of pain or distress in accordance with subsection (1) does not constitute an intervening cause¹ of death; and
 - (b) the non-application or discontinuance of life sustaining measures in accordance with subsection (2) does not constitute an intervening cause¹ of death.

Note—

- 1 *A novus actus interveniens* is a cause that breaks a pre-existing chain of causation.

18—Saving provision

- (1) This Act does not authorise the administration of medical treatment for the purpose of causing the death of the person to whom the treatment is administered.
- (2) This Act does not authorise a person to assist the suicide of another.

Part 3A—Dispute resolution, reviews and appeals

Division 1—Preliminary

18A—Interpretation

In this Part—

eligible person, in relation to a matter, means—

- (a) if the matter relates to a child—a parent or guardian of the child; and
- (b) if the matter relates to a patient with impaired decision-making capacity in respect of a particular decision—a person responsible for the patient; and
- (c) a medical practitioner who is providing, or is to provide, the medical treatment to which the matter relates; and
- (d) any other person who satisfies the Public Advocate or Tribunal (as the case requires) that he or she has a proper interest in the matter;

medical practitioner and *medical treatment*, in relation to the administration, or proposed administration, of medical treatment to a patient pursuant to Part 2A, have the same meanings as in that Part;

patient means a patient within the meaning of Part 2A;

person responsible for a patient has the same meaning as in Part 2A.

18B—Application of Part

This Part applies to the following matters:

- (a) a decision of a parent or guardian of a child to consent, or to refuse to consent, to the administration of medical treatment to the child;

- (b) a decision of a medical practitioner to administer, or not administer, medical treatment to a patient pursuant to Part 2A;
- (c) a decision of a person responsible for a patient to consent, or to refuse to consent, to the administration of medical treatment to the person pursuant to Part 2A;
- (d) any other matter prescribed by the regulations for the purposes of this section.

Division 2—Resolution of disputes by Public Advocate

18C—Resolution of disputes by Public Advocate

- (1) The Public Advocate may, on application by an eligible person in relation to a matter to which this Part applies or on his or her own initiative, provide preliminary assistance in resolving the matter, including by—
 - (a) ensuring that the parties to the matter are fully aware of their rights and obligations; and
 - (b) identifying the issues (if any) that are in dispute between the parties; and
 - (c) canvassing options that may obviate the need for further proceedings; and
 - (d) where appropriate, facilitating full and open communication between the parties.
- (2) The Public Advocate may mediate a matter to which this Part applies on application by an eligible person in relation to the matter.
- (3) An application under this section—
 - (a) must be made in a manner and form determined by the Public Advocate; and
 - (b) must be accompanied by such information as the Public Advocate may reasonably require; and
 - (c) must be accompanied by the prescribed fee.
- (4) Before undertaking a mediation, the Public Advocate may, if he or she thinks it appropriate to do so, require an applicant for mediation who is not a medical practitioner to first obtain a written report from an independent medical practitioner (made after examining the relevant person) setting out—
 - (a) the potential advantages and disadvantages of—
 - (i) the medical treatment that a medical practitioner proposes to administer to the relevant person; and
 - (ii) any medical treatment that the eligible person, or some other person, has requested be administered to the relevant person; and

Note—

This includes where the medical treatment comprises the withdrawal or withholding of medical treatment—see section 4A.

- (b) whether, in the independent medical practitioner's opinion, the requested treatment is in the best interest of the relevant person's health and well-being; and

- (c) any other information required by the regulations for the purposes of this subsection.
- (5) The Public Advocate may bring a mediation to an end at any time—
 - (a) if, in the opinion of the Public Advocate, it is more appropriate that the matter be dealt with by the Tribunal; or
 - (b) at the request of a party to the mediation.
- (6) Evidence of anything said or done in the course of a mediation is not admissible in subsequent proceedings except by consent of all parties to the proceedings.
- (7) Without limiting any other ways in which the Public Advocate may inform himself or herself for the purposes of a mediation, the Public Advocate may seek advice from such persons as the Public Advocate thinks fit in relation to protecting the interests of a child who is a party to, or is otherwise affected by, the matter the subject of the mediation.
- (8) The Public Advocate has, for the purposes of this section, the same privileges and immunities as a member of the Tribunal under the *South Australian Civil and Administrative Tribunal Act 2013*.
- (9) Subject to this Act, the Public Advocate may conduct a mediation in such manner as he or she thinks fit.
- (10) The regulations may make further provisions in relation to mediations under this section.

18D—Public Advocate may refer matter to Tribunal

- (1) If the Public Advocate ends a mediation under section 18C on the grounds that it is more appropriate that the matter be dealt with by the Tribunal, the Public Advocate may refer the matter to the Tribunal.
- (2) The regulations may make further provision in respect of referrals under this section.

18DA—Public Advocate may refer question of law to Supreme Court

The Public Advocate may refer any question of law for the opinion of the Supreme Court.

Division 3—Resolution of disputes by Tribunal

18E—Resolution of disputes by Tribunal

- (1) An eligible person in relation to a matter to which this Part applies may apply to the Tribunal for—
 - (a) a review of a matter mediated by the Public Advocate under section 18C; or
 - (b) a declaration or direction in relation to the matter (including, to avoid doubt, a matter contemplated by section 18C).
- (4) The Tribunal may, on determining an application under this section—
 - (a) in the case of a review of a matter mediated by the Public Advocate under section 18C—confirm, cancel or reverse a decision that is the subject of the review; and

- (b) in any case—
- (i) make any declarations that the Tribunal thinks necessary or desirable in the circumstances of the case; and
 - (ii) give any directions that the Tribunal thinks necessary or desirable in the circumstances of the case (including a direction that the administration of particular medical treatment to a person be withdrawn or withheld); and
 - (iii) give any advice that the Tribunal considers necessary or desirable in the circumstances of the case.
- (5) The Tribunal may vary or revoke a declaration or direction under this section.
 - (6) The person to whom the medical treatment is to be provided or not provided (as the case requires) is (if he or she is not the applicant) a party to the proceedings.
 - (7) Section 51 of the *South Australian Civil and Administrative Tribunal Act 2013* does not apply to, or in relation to, proceedings under this section.
 - (8) Without limiting any other ways in which the Tribunal may inform itself for the purposes of this section, the Tribunal may seek advice from such persons or bodies as the Tribunal thinks fit in relation to protecting the interests of a child who is a party to, or is otherwise affected by, an application.
 - (9) The regulations may make further provisions in relation to proceedings under this section.
 - (10) Subject to this Act, the Tribunal may conduct a review under this section in such manner as it thinks fit.

18F—Tribunal may refer matter to Public Advocate

- (1) If the Tribunal is of the opinion that it is more appropriate that a particular application under section 18E be dealt with by the Public Advocate, the Tribunal may refer the matter to the Public Advocate.
- (2) The regulations may make further provision in respect of referrals under this section.

18G—Failing to comply with direction of Tribunal

- (1) Subject to this Act, a person who fails to comply with a direction of the Tribunal under section 18E is guilty of an offence.
Maximum penalty: \$20 000 or imprisonment for 6 months.
- (2) It is a defence to a charge of an offence against subsection (1) if the defendant proves that he or she did not know, and could not reasonably have been expected to know, that his or her conduct amounted to a failure to comply with the relevant direction.

Division 4—Reviews and appeals

18H—Reviews and appeals

The following provisions operate in connection with the application of Part 5 of the *South Australian Civil and Administrative Tribunal Act 2013* in relation to this Act:

- (a) a decision of the Tribunal not to authorise publication of a report of proceedings before the Tribunal may not be the subject of an application for internal review;
- (b) subject to paragraph (a), an application for internal review may be made by—
 - (i) the applicant in proceedings before the Tribunal in the exercise of its original jurisdiction (within the meaning of the *South Australian Civil and Administrative Tribunal Act 2013*) for the purposes of this Act; or
 - (ii) a person to whom the proceedings relate (if not the applicant under paragraph (a)); or
 - (iii) the Public Advocate; or
 - (iv) any person who presented evidence or material before, or made submissions to, the Tribunal in the relevant proceedings; or
 - (v) any other person who satisfies the Tribunal that he or she has a proper interest in the matter;
- (c) the person to whom an application for internal review relates (if he or she is not the applicant) will be a party to those proceedings;
- (d) the Tribunal may make an order for costs against a party to proceedings for internal review, but only if the Tribunal is satisfied that the institution of the proceedings, or the party's conduct in relation to the proceedings, was frivolous, vexatious or calculated to cause delay;
- (e) an appeal under section 71 of the *South Australian Civil and Administrative Tribunal Act 2013* must be instituted within 14 days—
 - (i) after the making of the decision to which the appeal relates; or
 - (ii) after being furnished with the reasons for that decision,whichever is the later (but the Supreme Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the appeal should be instituted within that period (even if the time for instituting the appeal has expired));
- (f) no order for costs may be made against an applicant in an appeal under section 71 of the *South Australian Civil and Administrative Tribunal Act 2013* if he or she is the person to whom the decision appealed against relates.

Part 3B—Special provisions relating to Tribunal

18I—Tribunal must give notice of proceedings

- (1) The Tribunal must give the following persons reasonable notice of the time and place of the hearings of proceedings before the Tribunal:
 - (a) the applicant;
 - (b) the person to whom the proceedings relate;
 - (c) the Public Advocate;
 - (d) such other persons as the Tribunal considers have a proper interest in the matter.
- (2) Despite subsection (1)—
 - (a) the Tribunal is not obliged to give notice of proceedings to a person if the person's whereabouts cannot, after reasonable enquiries, be ascertained; and
 - (b) the Tribunal may, if satisfied that urgent action is required in proceedings before the Tribunal, make an order (or any other decision) as a matter of urgency without complying with subsection (1), with effect for a period not exceeding 21 days as directed by the Tribunal.

18J—Reasons for decisions

The Tribunal must, on request by a person who has a right of internal review of a decision of the Tribunal or who satisfies the Tribunal that he or she has a proper interest in the matter, furnish the person with a written statement of the Tribunal's reasons for the decision, but not—

- (a) if the request is made after the period for the review has expired; or
- (b) if a review has been instituted—after the review has been decided.

18K—Representation of person who is subject of proceedings

- (1) A person who is the subject of proceedings before the Tribunal is entitled to appear before the Tribunal by—
 - (a) the Public Advocate; or
 - (b) except in the case of an internal review—a recognised advocate.
- (2) Subsection (1) applies in addition to section 56(1) of the *South Australian Civil and Administrative Tribunal Act 2013*.
- (3) In this section—

recognised advocate means a person who is, by instrument in writing, recognised by the Tribunal as a person who is qualified to act as an advocate in proceedings before the Tribunal for the person to whom the proceedings relate.

Part 4—Regulations

19—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting subsection (1), the regulations may make provisions of a saving or transitional nature.
- (3) The regulations may—
 - (a) be of general application or vary in their application according to prescribed factors;
 - (b) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or a specified person or body.

Schedule 3—Transitional provisions

2—Transitional provisions

- (1) Despite the repeal of the *Natural Death Act 1983*, a direction made under that Act remains effective, subject to revocation or amendment by the person who made it, as a statement of that person's desire not to be subjected to extraordinary measures as defined in that Act to prolong life if suffering from a terminal illness.
- (2) If before the commencement of this Act a person granted an enduring power of attorney and purported to confer on the agent power to decide questions about the medical treatment of the grantor of the power in the event of the grantor's incapacity to do so, that power of attorney is as valid and effective as if it had been made under this Act.

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation repealed by principal Act

The *Consent to Medical Treatment and Palliative Care Act 1995* repealed the following:

Consent to Medical and Dental Treatment Act 1985

Natural Death Act 1983

Legislation amended by principal Act

The *Consent to Medical Treatment and Palliative Care Act 1995* amended the following:

Guardianship and Administration Act 1993

Mental Health Act 1993

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1995	26	<i>Consent to Medical Treatment and Palliative Care Act 1995</i>	27.4.1995	30.11.1995 (<i>Gazette 30.11.1995 p1500</i>) except s 14—30.5.1996: s 2(3)
2004	12	<i>Consent to Medical Treatment and Palliative Care (Prescribed Forms) Amendment Act 2004</i>	13.5.2004	1.7.2004 (<i>Gazette 3.6.2004 p1716</i>)
2010	5	<i>Health Practitioner Regulation National Law (South Australia) Act 2010</i>	1.7.2010	Sch 1 (cl 5)—1.7.2010 (<i>Gazette 1.7.2010 p3338</i>)
2013	12	<i>Advance Care Directives Act 2013</i>	18.4.2013	Sch 1 (cll 2—13, 32—34, 36 & 37)—1.7.2014 (<i>Gazette 6.2.2014 p546</i>)
2014	26	<i>Statutes Amendment (SACAT) Act 2014</i>	11.12.2014	Pt 5 (ss 30—43)—29.3.2015 (<i>Gazette 5.3.2015 p883</i>)

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	1.7.2004
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.7.2004</i>
s 3	(a)(ii) deleted by 12/2013 Sch 1 cl 2(1)	1.7.2014
	amended by 12/2013 Sch 1 cl 2(2)	1.7.2014
s 4		
s 4(1)	s 4 redesignated as s 4(1) by 12/2013 Sch 1 cl 3(9)	1.7.2014
<i>anticipatory direction</i>	<i>deleted by 12/2013 Sch 1 cl 3(1)</i>	<i>1.7.2014</i>
advance care directive	inserted by 12/2013 Sch 1 cl 3(1)	1.7.2014
<i>authorised witness</i>	<i>deleted by 12/2013 Sch 1 cl 3(2)</i>	<i>1.7.2014</i>
<i>available</i>	<i>deleted by 12/2013 Sch 1 cl 3(3)</i>	<i>1.7.2014</i>
decision	inserted by 26/2014 s 30(1)	29.3.2015
dentist	substituted by 12/2004 s 4	1.7.2004
	substituted by 5/2010 Sch 1 cl 5(1)	1.7.2010
<i>Guardianship Board</i>	<i>inserted by 12/2013 Sch 1 cl 3(4)</i>	<i>1.7.2014</i>
	<i>deleted by 26/2014 s 30(2)</i>	29.3.2015
impaired decision-making capacity	inserted by 12/2013 Sch 1 cl 3(4)	1.7.2014
internal review	inserted by 26/2014 s 30(3)	29.3.2015
<i>medical agent</i>	<i>deleted by 12/2013 Sch 1 cl 3(5)</i>	<i>1.7.2014</i>
medical practitioner	substituted by 5/2010 Sch 1 cl 5(2)	1.7.2010
medical treatment	substituted by 12/2013 Sch 1 cl 3(6)	1.7.2014
parent	substituted by 12/2013 Sch 1 cl 3(7)	1.7.2014
persistent vegetative state	inserted by 12/2013 Sch 1 cl 3(7)	1.7.2014
Public Advocate	inserted by 12/2013 Sch 1 cl 3(7)	1.7.2014
	substituted by 26/2014 s 30(4)	29.3.2015
representative	substituted by 12/2013 Sch 1 cl 3(8)	1.7.2014
substitute decision-maker	inserted by 12/2013 Sch 1 cl 3(8)	1.7.2014
Tribunal	inserted by 26/2014 s 30(5)	29.3.2015
s 4(2)—(5)	inserted by 12/2013 Sch 1 cl 3(9)	1.7.2014
ss 4A and 4B	inserted by 12/2013 Sch 1 cl 4	1.7.2014

s 5	<i>deleted by 12/2013 Sch 1 cl 5</i>	1.7.2014
Pt 2		
heading	amended by 12/2013 Sch 1 cl 6	1.7.2014
<i>Pt 2 Div 2 before deletion by 12/2013</i>		
s 7		
s 7(2)	<i>amended by 12/2004 s 5</i>	1.7.2004
<i>Pt 2 Div 2</i>	<i>deleted by 12/2013 Sch 1 cl 7</i>	1.7.2014
<i>Pt 2 Div 3 before deletion by 12/2013</i>		
s 8		
s 8(2)	<i>amended by 12/2004 s 6</i>	1.7.2004
<i>Pt 2 Div 3</i>	<i>deleted by 12/2013 Sch 1 cl 7</i>	1.7.2014
Pt 2 Div 5		
s 13		
s 13(1)	amended by 12/2013 Sch 1 cl 8(1)—(3)	1.7.2014
s 13(1a)	inserted by 12/2013 Sch 1 cl 8(4)	1.7.2014
s 13(2)	amended by 12/2013 Sch 1 cl 8(5)	1.7.2014
s 13(2a)	inserted by 12/2013 Sch 1 cl 8(6)	1.7.2014
s 13(3)	substituted by 12/2013 Sch 1 cl 8(7)	1.7.2014
s 13(4)	amended by 12/2013 Sch 1 cl 8(8)	1.7.2014
s 13(4a)	inserted by 12/2013 Sch 1 cl 8(9)	1.7.2014
<i>Pt 2 Div 6</i>	<i>deleted by 12/2013 Sch 1 cl 9</i>	1.7.2014
Pt 2A	inserted by 12/2013 Sch 1 cl 10	1.7.2014
s 14		
s 14(1)		
person responsible	amended by 26/2014 s 31(1), (2)	29.3.2015
Pt 3		
s 17		
s 17(2)	substituted by 12/2013 Sch 1 cl 11	1.7.2014
Pt 3A	inserted by 12/2013 Sch 1 cl 12	1.7.2014
heading	substituted by 26/2014 s 32	29.3.2015
Pt 3A Div 1		
s 18A		
eligible person	amended by 26/2014 s 33	29.3.2015
Pt 3A Div 2		
s 18C		
s 18C(5)	amended by 26/2014 s 34(1)	29.3.2015
s 18C(8)	amended by 26/2014 s 34(1), (2)	29.3.2015
s 18D		
s 18D(1)	amended by 26/2014 s 35	29.3.2015
s 18DA	inserted by 26/2014 s 36	29.3.2015
Pt 3A Div 3		

heading	substituted by 26/2014 s 37	29.3.2015
s 18E		
s 18E(1)	amended by 26/2014 s 38(1)	29.3.2015
s 18E(2) and (3)	deleted by 26/2014 s 38(2)	29.3.2015
s 18E(4) and (5)	amended by 26/2014 s 38(1)	29.3.2015
s 18E(7)	substituted by 26/2014 s 38(3)	29.3.2015
s 18E(8)	amended by 26/2014 s 38(1)	29.3.2015
s 18E(10)	substituted by 26/2014 s 38(4)	29.3.2015
s 18F		
s 18F(1)	amended by 26/2014 s 39	29.3.2015
s 18G		
s 18G(1)	amended by 26/2014 s 40	29.3.2015
Pt 3A Div 4	substituted by 26/2014 s 41	29.3.2015
Pt 3B	inserted by 26/2014 s 42	29.3.2015
Pt 4		
s 19	substituted by 12/2013 Sch 1 cl 13	1.7.2014
<i>Schs 1 and 2</i>	deleted by 12/2004 s 7	1.7.2004
Sch 3		
<i>cll 2, 3 and 4</i>	omitted under Legislation Revision and Publication Act 2002	1.7.2004

Transitional etc provisions associated with Act or amendments

Advance Care Directives Act 2013, Sch 1 Pt 8—Transitional provisions

32—Transitional provisions relating to anticipatory directions under *Consent to Medical Treatment and Palliative Care Act 1995*

- (1) A direction given by a person under section 7 of the *Consent to Medical Treatment and Palliative Care Act 1995* that is in force immediately before the commencement of clause 7 of this Schedule will, on the commencement of that clause, be taken to be an advance care directive given in accordance with this Act.

Note—

See also clause 36.

- (2) A provision of such a direction of a kind contemplated by section 6 or 12(1) of this Act will be taken to be void and of no effect.
- (3) An advance care directive contemplated by this clause—
- will be taken to have been given by the person who gave the direction; and
 - will be taken to contain such provisions as may be necessary to give effect to the direction (but no other provision); and
 - will be taken to contain a provision limiting the circumstances in which the advance care directive has effect to the circumstances contemplated by section 7(1) of the *Consent to Medical Treatment and Palliative Care Act 1995* (as in force immediately before the commencement of clause 7 of this Schedule).

Note—

Those circumstances are limited to where the person is in the terminal phase of a terminal illness, or in a persistent vegetative state, and is incapable of making decisions about medical treatment when the question of administering the treatment arises.

- (4) Any relevant condition or limitation contained in the direction will be taken to apply to an advance care directive contemplated by this section.
- (5) The prescribed form by which the direction under section 7 of the *Consent to Medical Treatment and Palliative Care Act 1995* was given will, for all purposes, be taken to be an advance care directive form.
- (6) A reference in any instrument or document to a direction under section 7 of the *Consent to Medical Treatment and Palliative Care Act 1995* (however described) will be taken to be a reference to the advance care directive contemplated by this clause.

33—Transitional provisions relating to medical agents under *Consent to Medical Treatment and Palliative Care Act 1995*

- (1) A medical power of attorney appointing an agent under section 8 of the *Consent to Medical Treatment and Palliative Care Act 1995* that is in force immediately before the commencement of clause 7 of this Schedule will, on the commencement of that clause, be taken to be an advance care directive given in accordance with this Act.

Note—

See also clause 36.

- (2) A provision of such a medical power of attorney of a kind contemplated by section 6 or 12(1) of this Act will be taken to be void and of no effect.
- (3) An advance care directive contemplated by this clause—
 - (a) will be taken to have been given by the person who gave the medical power of attorney; and
 - (b) will be taken to appoint each agent appointed by the medical power of attorney as a substitute decision-maker under the advance care directive; and
 - (c) will be taken to contain such provisions as may be necessary to enable each substitute decision-maker to make any decision he or she could have made as the person's agent (but no other provision).
- (4) Any relevant condition or limitation contained in the medical power of attorney will be taken to apply to an advance care directive contemplated by this section.
- (5) The prescribed form by which the medical power of attorney was given will, for all purposes, be taken to be an advance care directive form.
- (6) A reference in any instrument or document to a medical power of attorney or agent under section 8 of the *Consent to Medical Treatment and Palliative Care Act 1995* (however described) will be taken to be a reference to the advance care directive or substitute decision-maker contemplated by this clause (as the case requires).

34—Transitional provisions relating to other instruments continued under *Consent to Medical Treatment and Palliative Care Act 1995*

- (1) A direction or enduring power of attorney continued in force pursuant to Schedule 3 of the *Consent to Medical Treatment and Palliative Care Act 1995* and that is in force immediately before the commencement of this clause will, on the commencement of Part 2 of this Schedule, be taken to be an advance care directive given in accordance with this Act.

Note—

See also clause 36.

- (2) A provision of such a direction or enduring power of attorney of a kind contemplated by section 6 or 12(1) of this Act will be taken to be void and of no effect.
- (3) An advance care directive contemplated by this clause—
- (a) will be taken to have been given by the person who gave the direction or enduring power of attorney (as the case requires); and
 - (b) in the case of an advance care directive related to a direction—will be taken to contain such provisions as may be necessary to give effect to the direction (but no other provision); and
 - (c) in the case of an advance care directive related to an enduring power of attorney—will be taken to appoint each agent appointed by the enduring power of attorney as a substitute decision-maker under the advance care directive; and
 - (d) will be taken to contain such provisions as may be necessary to enable each substitute decision-maker to make any decision he or she could have made as the person's agent under the enduring power of attorney (but no other provision).
- (4) Any condition or limitation contained in the direction or enduring power of attorney (as the case requires) will be taken to apply to an advance care directive contemplated by this section.
- (5) Any instrument by which the direction or enduring power of attorney was given will, for all purposes, be taken to be an advance care directive form.
- (6) A reference in any instrument or document to a direction or enduring power of attorney to which this clause relates (however described) will be taken to be a reference to the advance care directive contemplated by this clause.

36—Only 1 advance care directive to be created

- (1) If 2 or more of clauses 32, 33, 34 or 35 apply in respect of a particular person, the person will, for the purposes of this or any other Act, be taken to have given 1 advance care directive containing, or subject to, the relevant provisions (in addition to any other applicable provisions under this Act).
- (2) In this clause—
- relevant provisions** means—
- (a) if clause 32 applies in respect of the person—clause 32(2), (3) and (4); and
 - (b) if clause 33 applies in respect of the person—clause 33(2), (3) and (4); and

- (c) if clause 34 applies in respect of the person—clause 34(2), (3) and (4); and
- (d) if clause 35 applies in respect of the person—clause 35(2), (3) and (4).

37—Disputes

A dispute arising out of the operation of this Schedule will be taken to be a matter to which Part 7 of this Act applies.

Statutes Amendment (SACAT) Act 2014

43—Transitional provisions

- (1) In this section—

Guardianship Board means the Guardianship Board established under the *Guardianship and Administration Act 1993*;

principal Act means the *Consent to Medical Treatment and Palliative Care Act 1995*;

relevant day means the day on which this Part comes into operation;

Tribunal means the South Australian Civil and Administrative Tribunal.

- (2) A right to make any application or referral, or to seek a review, under the principal Act with respect to any matter in existence before the relevant day, with the effect that the relevant proceedings would have been commenced before the Guardianship Board, will be exercised as if this Part had been in operation before the right arose, so that the relevant proceedings may be commenced instead before the Tribunal.
- (3) Any proceedings before the Guardianship Board under the principal Act immediately before the relevant day will, subject to such directions as the President of the Tribunal thinks fit, be transferred to the Tribunal where they may proceed as if they had been commenced before the Tribunal.
- (4) The Tribunal may—
 - (a) receive in evidence any transcript of evidence in proceedings before the Guardianship Board, and draw any conclusions of fact from that evidence that appear proper; and
 - (b) adopt any findings or determinations of the Guardianship Board that may be relevant to proceedings before the Tribunal; and
 - (c) adopt or make any decision (including a decision in the nature of a declaration), direction or order in relation to proceedings before the Guardianship Board before the relevant day (including so as to make a decision or declaration, or a direction or order, in relation to proceedings fully heard before the relevant day); and
 - (d) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of this section.
- (5) Nothing in this section affects a right to appeal to the Administrative and Disciplinary Division of the District Court against a decision, direction or order of the Guardianship Board made or given before the relevant day.

Historical versions

1.7.2004

1.7.2010

1.7.2014