

Legislative Council—No 93

As introduced and read a first time, 17 October 2012

South Australia

Statutes Amendment (Interstate Advance Directives) Bill 2012

A BILL FOR

An Act to amend the *Consent to Medical Treatment and Palliative Care Act 1995* and the *Guardianship and Administration Act 1993*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Interstate Advance Directives) Act 2012*.

5 2—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Consent to Medical Treatment and Palliative Care Act 1995*

10 3—Insertion of Part 2A

After section 14 insert:

Part 2A—Recognition of advance directives from other jurisdictions

14A—Recognition of advance directives from other jurisdictions

- 15 (1) The Governor may, by regulation—
 - (a) declare a class of instruments made under a law of the Commonwealth, or another State or Territory, to be an *interstate advance directive*; and
 - 20 (b) declare that a specified class of interstate advance directives will be taken—

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- (i) to correspond to a specified instrument under a specified provision or provisions of this Act; or
 - (ii) to have effect in this jurisdiction as if the law under which the interstate advance directive was given applied in this State.
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- (2) Subject to this section, for the purposes of the laws of this State, an interstate advance directive that is in force has effect in this State—
- (a) if the interstate advance directive is declared to correspond to an anticipatory grant or refusal of consent to medical treatment under section 7—as if it were an anticipatory grant or refusal of consent to medical treatment given in accordance with that section; or
 - (b) if the interstate advance directive is declared to correspond to the appointment by medical power of attorney of an agent with power to make decisions on a person's behalf about medical treatment under section 8—as if it were such an appointment made in accordance with that section; or
 - (c) if the interstate advance directive is declared to have effect in this jurisdiction as if the law under which the interstate advance directive was given applied in this State—in accordance with its terms and that law.
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- (3) However, an interstate advance directive contemplated by subsection (2)(a) or (b) does not have effect in this State to the extent that it could not (having regard to any limitations or exclusions relating to giving of anticipatory directions under section 7 or the appointment of medical agents under section 8 (as the case requires)) have been validly made under this Act.
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- (4) For the purposes of the laws of this State, an interstate advance directive is subject to any limitations or exclusions (including a limitation or exclusion in respect of the powers of a person appointed under the interstate advance directive) that apply to it under the laws of the jurisdiction in which it was given.
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- (5) For the purposes of the law of this State, the following provisions of an interstate advance directive will be taken to be void and of no effect in this State (whether or not the provision was able to be included in the interstate advance directive in the jurisdiction in which it was given):
- (a) a provision that requires an unlawful act to be performed in this State;
 - (b) a provision that would, if given effect, cause a medical practitioner or other person to contravene a professional standard or code of conduct (however described) that applies to the medical practitioner or person;
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- (c) a provision that purports to compel, or authorises a person to compel, a medical practitioner to provide, or to refuse to provide, a particular form of medical treatment to a person;
- (d) a provision that purports to comprise a refusal of medical treatment ordered under a community treatment order or a detention and treatment order under the *Mental Health Act 2009*;
- (e) any other provision of a kind declared by the regulations to be within the ambit of this subsection.

- (6) To avoid doubt, this section applies in relation to an interstate advance directive whether it was given before or after the commencement of this section.

Part 3—Amendment of *Guardianship and Administration Act 1993*

4—Insertion of section 27A

After section 27 insert:

27A—Recognition of enduring guardians appointed in other jurisdictions

- (1) Subject to this section, an appointment of an enduring guardian (however described) under a law of the Commonwealth, or another State or Territory, that is in force has effect in this State as if it were an appointment of an enduring guardian under this Act.
- (2) However, an appointment of an enduring guardian contemplated by subsection (1) does not have effect in this State to the extent that the appointment could not (having regard to any limitations or exclusions relating to the appointment of enduring guardians under section 25) have been validly made under this Act.
- (3) For the purposes of the laws of this State, an appointment of an enduring guardian contemplated by subsection (1) is subject to any limitations or exclusions (including a limitation or exclusion in respect of the powers of the enduring guardian) that apply to it under the laws of the jurisdiction in which it was made.
- (4) Section 26 does not apply in relation to an appointment of an enduring guardian contemplated by subsection (1).
- (5) To avoid doubt, this section applies in relation to an appointment of an enduring guardian whether it was made before or after the commencement of this section.