

Legislative Council—No 173A

As reported with an amendment, report adopted, Standing Orders suspended and passed remaining stages, 18 November 2021

South Australia

**Advance Care Directives (Review) Amendment
Bill 2021**

A BILL FOR

An Act to amend the *Advance Care Directives Act 2013*.

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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 *Advance Care Directives (Review) Amendment Act 2021*.

5 2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

3—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 *Advance Care Directives Act 2013*

4—Insertion of section 5A

After section 5 insert:

5A—References to advance care directive to include certain digital copies

Except where the contrary intention appears, a reference in this Act to an advance care directive (being an advance care directive form that has been completed and witnessed in accordance with this Act and by which a person has given an advance care directive) will be taken to include an electronic copy of the advance care directive of a kind prescribed by, or prepared in accordance with, the regulations.

5—Insertion of section 8A

After section 8 insert:

8A—Interaction with other Acts and laws

- (1) This Act is in addition to, and does not derogate from, any other Act or law.
- (2) To avoid doubt, a direction (however described) given by a person under another Act or law is not an advance care directive for the purposes of this or any other Act.

6—Amendment of section 14—Giving advance care directives where English not first language

- (1) Section 14(1)(a)—delete "relation to a language in which the person is fluent (the *interpreter*)" and substitute:

accordance with this section

- (2) Section 14(1)(b)—delete "the interpreter" insert:

an interpreter in accordance with this section

- (3) Section 14(2)—delete subsection (2) and substitute:

- (2) For the purposes of this Act, an interpreter who assists a person to give an advance care directive—

- (a) must be 18 or more years of age; and
- (b) must not have impaired decision-making capacity in relation to a decision that is reasonably likely to be made in the course of such interpretation; and
- (c) must comply with any other requirements set out in the regulations for the purposes of this paragraph.

- (3) However, a person cannot be an interpreter in relation to a particular advance care directive if—
- (a) the person is appointed under the advance care directive as a substitute decision-maker; or
 - (b) the person has a direct or indirect interest in the estate of the person giving the advance care directive (whether as a beneficiary of the person's will or otherwise); or
 - (c) the person is a health practitioner who is responsible (whether solely or with others) for the health care of the person giving the advance care directive; or
 - (d) the person occupies a position of authority in a hospital, hospice, nursing home or other facility at which the person giving the advance care directive resides.
- (4) To avoid doubt, a person who is a suitable witness in relation to a particular advance care directive (being a person who is not prevented by subsection (2) or (3) from being an interpreter in relation to the advance care directive) may act as an interpreter under this section.
- (5) To avoid doubt, nothing in subsection (2) or (3) affects the validity of an advance care directive given before the commencement of those subsections.

7—Amendment of section 21—Requirements in relation to appointment of substitute decision-makers

Section 21(1)—delete "1 or more adults to be substitute decision-makers in respect of the advance care directive" and substitute:

such number of adults to be substitute decision-makers in respect of the advance care directive as the person thinks fit

8—Substitution of section 22

Section 22—delete the section and substitute:

22—Substitute decision-makers empowered separately and together etc

- (1) A person giving an advance care directive may, in relation to the appointment of substitute decision-makers in respect of the advance care directive, impose such conditions on the exercise of powers or making of decisions by the substitute decision-makers as the person thinks fit, including (without limiting this subsection) by—
- (a) appointing the substitute decision-makers in order of precedence; or
 - (b) limiting specified powers or decisions that may be exercised or made under the advance care directive to a specified substitute decision-maker or substitute decision-makers; or

- (c) appointing substitute decision-makers as alternative substitute decision-makers and limiting their powers to where a specified substitute decision-maker or substitute decision-makers are not available.

- 5 (2) Subject to this Act and to any provision of an advance care directive to the contrary, if a person giving an advance care directive appoints more than 1 substitute decision-maker in respect of the advance care directive, the substitute decision-makers are empowered separately and together to make decisions under the advance care directive.

10 **9—Amendment of section 24—Exercise of powers by substitute decision-maker**

Section 24(2)—delete subsection (2) and substitute:

- 15 (2) For the purposes of this Act, a requirement that a substitute decision-maker produce an advance care directive will be taken to be satisfied if—
- (a) the substitute decision-maker produces a document that has been certified, in accordance with the regulations, as a true copy of the advance care directive; or
 - (b) the substitute decision-maker makes available a copy of the advance care directive in accordance with a scheme set out in the regulations in respect of electronic access to, or provision of, copies of advance care directives; or
 - (c) the health practitioner to whom the advance care directive is to be produced accesses an electronic copy of the advance care directive in accordance with any requirements set out in the regulations.
- 20
- 25

10—Insertion of section 36A

After section 36 insert:

30 **36A—Certain provisions of advance care directive of no effect where suicide attempt or self harm**

- (1) Despite any other provision of this Act, the following provisions apply in circumstances where a person who has given an advance care directive attempts suicide, or otherwise intentionally causes harm to themselves:
- (a) a provision of the advance care directive comprising a refusal of particular health care (whether express or implied) will, to the extent that the health care arises out of, or is directly related to, the attempted suicide or self-harm, be taken to be of no effect;
- 35

40 **Note—**

Consequently, such a provision of an advance care directive does not constitute a binding provision of the advance care directive, and a health practitioner need not comply with the provision.

(b) section 36 will be taken not to apply to, or in relation to, a health practitioner providing health care to the person where the health care is directly related to the attempted suicide or self-harm,

5 however, nothing in this subsection limits a provision of the *Consent to Medical Treatment and Palliative Care Act 1995* or any other Act or law requiring consent to be obtained before such health care is provided to the person.

10 (2) Nothing in subsection (1) affects the remaining provisions of an advance care directive (including, to avoid doubt, the refusal of health care other than that directly related to the attempted suicide or self-harm).

15 (3) Without limiting any other provision of this or any other Act, a health practitioner or other person incurs no civil or criminal liability for a refusal or failure to comply with a provision of an advance care directive referred to in subsection (1).

11—Amendment of section 45—Resolution of disputes by Public Advocate

(1) Section 45(3)—after "may" insert:

refuse to determine an application under this section, or

20 (2) Section 45(5), (6) and (7)—delete subsections (5), (6) and (7)

(3) Section 45(13)—delete "mediations under this section" and substitute:

the operation of this section

Schedule 1—Statute law revision of *Advance Care Directives Act 2013*

25

Provision amended	How amended
section 7(1)(a)(iv)	delete "his or her" and substitute: their
section 7(1)(b)	delete "he or she" and substitute: the person
section 10	delete "his or her" wherever occurring and substitute in each case: their
section 10(b)	delete "for him or her"
section 10(f)	delete "he or she" and substitute: the person
section 11(1)	delete "he or she" and substitute: the person
section 11(3)	delete "he or she" and substitute: the person

Provision amended	How amended
section 11(5)(g)	delete "his or her" and substitute: their
section 14(1)	delete "his or her" wherever occurring and substitute in each case: their
section 15(1)(b)(i) and (ii)	delete "he or she" wherever occurring and substitute in each case: the suitable witness
section 15(1)(b)(iii) and (iv)	delete "his or her" wherever occurring and substitute in each case: their
section 15(1)(b)(iii)	delete "him or her" and substitute: them
section 15(2)	delete "he or she" wherever occurring and substitute in each case: the person
section 25	delete "he or she" and substitute: the substitute decision-maker
section 26	delete "he or she" and substitute: the substitute decision-maker
section 26	delete "his or her" wherever occurring and substitute in each case: their
section 27	delete "his or her" wherever occurring and substitute in each case: their
section 31(4)	delete "he or she" and substitute: the defendant
section 31(4)	delete "his or her" and substitute: their
section 31(5)(b)	delete "he or she" and substitute: the person
section 32(2)(a)	delete "his or her" and substitute: their
section 35(1)(b)	delete "he or she" and substitute: the substitute decision-maker
section 39(1)	delete "his or her" and substitute: their

Advance Care Directives (Review) Amendment Bill 2021Schedule 1—Statute law revision of *Advance Care Directives Act 2013*

Provision amended	How amended
section 40	delete "he or she" and substitute: the person
section 45	delete "his or her" wherever occurring and substitute in each case: their
section 45(11)	delete "he or she" and substitute: the Public Advocate
section 48(5)	delete "he or she" and substitute: the person
section 50(2)	delete "he or she" and substitute: the defendant
section 50(2)	delete "his or her" and substitute: their
section 51(1)(c)	delete "his or her" and substitute: their
section 53(b)(v)	delete "he or she has" and substitute: they have
section 53(c)	delete "he or she" and substitute: the person
section 53(f)	delete "he or she is" and substitute: they are
section 54A	delete "he or she has" and substitute: they have
section 56(2)	delete "he or she" and substitute: the person
section 57(2)	delete "he or she" and substitute: that substitute decision-maker
section 60(1)	delete "he or she" and substitute: the person
section 60(2)	delete "he or she" wherever occurring and substitute in each case: they
section 62(1)	delete "him or her" and substitute: the Minister
Schedule 1, clause 33(3)(c)	delete "he or she" and substitute: the substitute decision-maker
Schedule 1, clause 34(4)(d)	delete "he or she" and substitute:

Advance Care Directives (Review) Amendment Bill 2021
Statute law revision of *Advance Care Directives Act 2013*—Schedule 1

Provision amended	How amended
	the substitute decision-maker
Schedule 1, clause 35(3)(c)	delete "he or she" and substitute: the substitute decision-maker