

South Australia

# **Advance Care Directives Variation Regulations 2015**

under the *Advance Care Directives Act 2013*

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## **Part 1—Preliminary**

### **1—Short title**

These regulations may be cited as the *Advance Care Directives Variation Regulations 2015*.

### **2—Commencement**

These regulations come into operation on the day on which they are made.

### **3—Variation provisions**

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

## **Part 2—Variation of *Advance Care Directives Regulations 2014***

### **4—Variation of regulation 4—Health practitioners**

Regulation 4(1)(a)—after "SAAS" insert:

or other person or body authorised to provide ambulance services under the *Health Care Act 2008*

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## **5—Variation of regulation 7—Witnessing advance care directives**

Regulation 7(1)—delete "if the person giving the advance care directive signed the advance care directive form in the presence of the suitable witness who witnesses the advance care directive." and substitute:

if—

- (a) in the case where 1 or more substitute decision-makers are appointed under the advance care directive—each substitute decision-maker has complied with regulation 8(1) before the advance care directive is witnessed; and
- (b) in any case—the person giving the advance care directive signs the advance care directive form in the presence of the suitable witness who witnesses the advance care directive.

## **6—Variation of regulation 8—Appointment of substitute decision-makers**

Regulation 8(1)—after "form" insert:

before the advance care directive is witnessed

## **7—Variation of regulation 12—Interstate advance care directives and corresponding laws**

- (1) Regulation 12(1)(d)—delete paragraph (d) and substitute:
  - (d) an advance personal plan under the *Advance Personal Planning Act 2013* of the Northern Territory that is in force;
- (2) Regulation 12(2)(c)—delete paragraph (c) and substitute:
  - (c) the *Advance Personal Planning Act 2013* of the Northern Territory;

## **8—Variation of Schedule 1—List of suitable witnesses**

- (1) Schedule 2 paragraph (m)—after "National Tax" insert:

and
- (2) Schedule 2 paragraph (v)— delete "Chartered Secretaries Australia" and substitute:

Governance Institute of Australia
- (3) Schedule 2 paragraph (za)— delete "the Australian Society of Certified Practising Accountants or the National Institute of Accountants" and substitute:

CPA Australia (Certified Public Accountants) or the Institute of Public Accountants

## 9—Insertion of Schedule 3

After Schedule 2 insert:

### **Schedule 3—Further transitional provisions**

#### **1—Further transitional provisions relating to appointment of enduring guardians**

- (1) Except as provided by this clause, this clause is in addition to, and does not derogate from, the provisions of Parts 5 and 8 of Schedule 1 of the Act.
- (2) This clause applies to an instrument in writing that—
  - (a) was created before the commencement of Schedule 1 Part 5 of the Act; and
  - (b) complies with any requirements under section 25(2)(a) of the *Guardianship and Administration Act 1993* (as in force at the time the instrument was created); and
  - (c) purports to appoint an enduring guardian in accordance with that section; and
  - (d) had not, at the time Schedule 1 Part 5 of the Act came into operation, been endorsed or witnessed (or both) as required under section 25(2)(b) and (c) of the *Guardianship and Administration Act 1993* (as in force immediately before the commencement of Schedule 1 Part 5 of the Act).
- (3) An instrument to which this clause applies will, despite the operation of Schedule 1 Part 5 of the Act—
  - (a) be taken to have been in force from the time it was created; and
  - (b) be taken to continue in force until—
    - (i) it is endorsed and witnessed in accordance with section 25(2)(b) and (c) of the *Guardianship and Administration Act 1993* (as in force immediately before the commencement of Schedule 1 Part 5 of the Act); or
    - (ii) 31 December 2015,  
whichever is the sooner; and
  - (c) on being so endorsed and witnessed (whether before or after the commencement of this clause), will be taken to be an advance care directive given in accordance with the Act,  
(but, to avoid doubt, nothing in this subclause operates to effect the appointment of an enduring guardian under the *Guardianship and Administration Act 1993*).

**Note—**

The provisions of the *Advance Care Directives Act 2013* will then apply to the instrument as if it were an advance care directive given under the Act rather than an appointment of an enduring guardian under the *Guardianship and Administration Act 1993*.

- (4) An advance care directive referred to in subclause (3) will be taken—
- (a) to have been given by the person who purported to appoint the enduring guardian; and
  - (b) to appoint as a substitute decision-maker each person who (by endorsement on the instrument to which this clause applies) has accepted his or her purported appointment as an enduring guardian; and
  - (c) 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 enduring guardian (but no other provision).
- (5) Any condition or limitation contained in an instrument to which this clause applies will be taken to apply to the advance care directive contemplated by this clause.
- (6) A provision of an instrument to which this clause applies that is a provision of a kind contemplated by section 6 or 12(1) of the Act will be taken to be void and of no effect.
- (7) An instrument to which this clause applies will, for all purposes, be taken to be an advance care directive form.
- (8) A reference in any instrument or document to an enduring guardian (being an enduring guardian purportedly appointed by an instrument to which this clause applies) will be taken to be a reference to a substitute decision-maker appointed by this clause.
- (9) Clauses 36 and 37 of Schedule 1 of the Act apply in relation to the operation of this clause as if the advance care directive were an advance care directive contemplated by clause 35 of that Schedule.

**Note—**

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

**Made by the Governor**

with the advice and consent of the Executive Council  
on 28 May 2015

No 50 of 2015

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