

South Australia

# **Advance Care Directives (Miscellaneous) Amendment Regulations 2024**

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 (Miscellaneous) Amendment Regulations 2024*.

### **2—Commencement**

These regulations come into operation on the day on which section 3 of the *Advance Care Directives (Review) Amendment Act 2023* comes into operation.

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

### **3—Insertion of regulation 4A**

After regulation 4 insert:

#### **4A—Electronic copies of advance care directives**

For the purposes of section 5A of the Act, electronic copies of an advance care directive of the following kinds are prescribed:

- (a) an electronic copy entered on the My Health Record system;
- (b) an electronic copy entered on the Sunrise EMR system;
- (c) an electronic copy entered on an electronic record system approved by the Chief Executive,

in each case being an electronic copy that was, prior to being entered on the relevant system, certified as a true copy of a particular advance care directive by a person, or a person of a class, included on the list of suitable witnesses set out in Schedule 1.

### **4—Amendment of regulation 5—Giving advance care directives**

Regulation 5—after its present contents (now to be designated as subregulation (1)) insert:

- (2) Without limiting the ways in which a certification may be made, or a part of an advance care directive completed or signed, under subregulation (1), a person giving an advance care directive may do so by electronic means.

### **5—Amendment of regulation 8—Appointment of substitute decision-makers**

Regulation 8—after subregulation (1) insert:

- (1a) Without limiting the ways in which a certification may be made, or a part of an advance care directive completed or signed, under subregulation (1), a substitute decision-maker may do so by electronic means.

### **6—Amendment of regulation 9—Copies of advance care directives**

Regulation 9—after subregulation (2) insert:

- (3) For the purposes of section 24(2)(c) of the Act, it is a requirement that the health practitioner accesses the electronic copy of the advance care directive on—
  - (a) the My Health Record system; or
  - (b) the Sunrise EMR system; or
  - (c) an electronic record system approved by the Chief Executive.

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

- (1) Regulation 12(1)(g)—delete "2000" and substitute:  
1995
- (2) Regulation 12(1)—after paragraph (g) insert:
  - (ga) an advance care directive instrument under the *Guardianship and Administration Act 1995* of Tasmania that is in force;
- (3) Regulation 12(2)(e)—delete "2000" and substitute:  
1995

## 8—Substitution of regulation 12A

Regulation 12A—delete regulation 12A and substitute:

### 12A—Exemption from requirement to give effect to advance care directives where suicide attempt or self-harm

- (1) For the purposes of section 36(1b)(a) of the Act, the following information is required:
  - (a) the name, address and age (if known) of the person to whom the health care was provided;
  - (b) the date or dates on which the health care was provided to the person
  - (c) the location or locations at which the health care was provided to the person
  - (d) a description of the health care provided to the person;
  - (e) the grounds for the health practitioner's suspicion that the person had attempted suicide or self-harmed;
  - (f) the grounds for the health practitioner's opinion that the provision of the health care was reasonably necessary to save the life of the person.
- (2) For the purposes of section 36(1b)(b) of the Act, a report must comply with the following requirements:
  - (a) the report must be made to the Chief Executive in a manner and form determined by the Chief Executive;
  - (b) the report must include such information, or be accompanied by such records and documents, as may be required by the Chief Executive.
- (3) In this regulation—

**Chief Executive** means the Chief Executive of the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of the Act and includes a person for the time being acting in that position.

## **9—Substitution of Schedule 1**

Schedule 1—delete Schedule 1 and substitute:

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

The following persons, or classes of persons, are suitable witnesses:

- (a) health practitioners;
- (b) persons enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described);
- (c) Commissioners for taking affidavits in the Supreme Court;
- (d) Justices of the Peace;
- (e) police officers;
- (f) social workers;
- (g) teachers.

#### **Editorial note—**

As required by section 10AA(2) of the *Legislative Instruments 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 25 January 2024

No 2 of 2024