

Changes to Consent Factsheet

A clear path to care

Changes to the Consent Act begin 1 July 2014

Changes to the Consent to Medical Treatment and Palliative Care Act 1995 come into effect 1 July 2014. These changes include:

- > Who can consent to health care, medical treatment and life sustaining treatment for a person who has impaired decision-making capacity.
- > Consent in emergency situations.
- > No obligation to use or continue to use life sustaining treatment for dying patients (s17(2)).

Impaired Decision-Making Capacity

The Advance Care Directives Act 2013 and the Consent to Medical Treatment and Palliative Care Act 1995 now specify when a patient is unable to consent/refuse. This is called impaired decision-making capacity. Assessing decision-making capacity is not a global assessment but decision specific and should be determined at the time consent is being obtained.

In respect of a particular decision, impaired decision-making capacity means the person is not capable of:

- > understanding any information that may be relevant to the decision, including the consequences
- > retaining such information, even for a short time
- > using information to make decisions
- > communicating the decision (in any way).

Who can consent (and refuse to consent) for a person with impaired decision-making capacity?

If there is an Advance Care Directive (ACD)

- > If a Substitute Decision-Maker (SDM) has been appointed with health care decision-making powers, they can consent or refuse to consent to health care, medical treatment and life sustaining treatment, the **SDM** must make a decision the person would have made in the circumstances.
- > If no Substitute Decision-Maker has been appointed but there is a relevant instruction in the Advance Care Directive – that relevant instruction is legally considered to be consent/refusal of consent.

If no ACD/SDM/or relevant instruction

- > A **Person responsible** has legal authority and can provide/refuse consent, in the following legal order:
 1. **Guardian** with health care decision-making powers appointed by the Guardianship Board/Tribunal.
 2. **Prescribed relative**¹ with a close and continuing relationship available and willing to make the decision.
 3. **Close friend** available and willing to make the decision.

If none of the above:

- **Someone charged with the day to day care and well-being of a patient** (eg Director of Nursing in aged care).
- **Guardianship Board/Tribunal, upon application (last resort).**

¹ Adult spouse or domestic partner or adult related by blood, marriage or adoption or Aboriginal kinship rules/marriage.

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- > A person responsible must try and make a decision the patient themselves would have made in the circumstances.
- > Health practitioners are protected for relying on consent/refusal of a SDM, Person Responsible or relevant instruction in an ACD in good faith and without negligence.
- > It is not the health practitioner's role to work out the 'close and continuing relationship' in relation to relatives and friends.
- > For advice or dispute resolution contact your local ACD mentor/advisor. If local advice or dispute resolution has not worked contact the Office of the Public Advocate Ph: 8342 8200 or Country free call 1800 066 969.

Care of the Dying

Section 17(2) of the Consent Act has been amended.

Previously it was thought by some medical practitioners to imply that they could be legally compelled to provide treatment to a patient even if they did not think it to be of benefit- ie futile treatment.

The law now clearly states that medical practitioners are 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.

In addition, if the patient or the patient's representative so directs, withdraw life sustaining measures from a patient in this situation.

For more information

SA Health
Policy and Commissioning Division
Email: policy&legislation@health.sa.gov.au
Subject line: Advance Care Directive

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