

## *Why do we need new Advance Care Directives?*

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## What is an Advance Care Directive?

- a written document completed and signed by a competent adult – young or old, well or unwell
- can record the person's wishes about future care or appoint and instruct a trusted substitute decision-maker or both
- covers health care, living arrangements and personal life management, but not financial and legal matters
- takes effect when the person lacks the capacity to make their own decisions

An **Advance Care Directive** written *by a person* is different to a **clinical treatment plan** written *for a patient* by a health professional or an **advance care plan** written *by a patient* assisted by a clinician

## Australia has ...

- 15 Advance Care Directives
- under 11 Acts of Parliament
- plus common law Advance Care Directives

South Australia has 3 Advance Care Directives under 2 Acts

- Enduring Power of Guardianship
  - Medical Power of Attorney
  - Anticipatory Direction
- [plus an Enduring Power of Attorney for financial decisions ]

## Advance Care Directives in Australia

State	Advance Care Directives
SA	Enduring Power of Guardianship Medical Power of Attorney Anticipatory Direction
VIC	Enduring Guardianship Enduring Power of Attorney (Medical Treatment) Refusal of Treatment Certificate
NSW	Enduring Guardianship
WA	Enduring Power of Guardianship Advance Health Directive
QLD	Enduring Power of Attorney (personal) Advance Health Directive
TAS	Enduring Guardianship
ACT	Enduring Power of Attorney (personal) Health Direction

## The problems with ACDs

### Variation across states:

- Different laws:** legislation, common law, lack of case law
- Different terminology:** ADs, ACDs, AHDs
- Different instruments:** EPGs, EPAs, MPAs, AHDs, RTC, AD
- Different operation:** writing instructions, appointing agents, both
- Different decisions:** medical, health, personal, residential
- Different coverage:** end-of-life, diagnosed terminal condition, any period of impaired capacity, transient/partial capacity
- Different rules:** medical authority, medical override, autonomy
- Different decision-making:** best interests, substituted judgement

## Why change?

### Challenges of writing ACDs:

- low uptake: many barriers to completion
- healthy people writing medical directions in advance of any diagnosis of disease or injury
- health care is more than just medical treatment

### Challenges of applying ACDs:

- clinicians do not follow the ACD instructions or ignore appointed decision-makers
- clinicians complain that medical directions are absent, uninformed, too specific or too non-specific
- people change their medical treatment preferences over time
- *but people can record life goals, unwanted circumstances, intolerable outcomes and personal lifestyle preferences*
- *and substitute decision-makers can follow such directions*

## Why now?

### A changing context:

An ageing population: living well longer

An informed population: through education, internet and media

An assertive population: demanding control

A death-defying population: expecting medical rescue

An era of medical progress:

but health care is more than medicine

## The social context

### Advance Care Directives are completed

- **in stages**: triggered by health issues – their own or others
- **in homes and communities**: by healthy people of all ages
- **in hospitals and hospices**: by people diagnosed with acute, chronic or terminal conditions
- **by people contemplating**: mental illness, chronic debilitating illness, sudden incapacity through injury
- **by people who don't want to write instructions** but are simply seeking to choose their substitute decision-maker
- **by people who want to refuse certain medical treatments ... or to be kept alive as long as possible**

## The legal context

- under common law the terms of an ACD must be respected
- a refusal of a specified medical procedure is legally binding on substitute decision-makers, families and health professionals
- a person can consent to treatment options that are offered and refuse such treatment, but cannot demand treatment that is not medically indicated
- health and aged care professionals should be protected from civil and criminal liability if they abide by the terms of an ACD that they believe, in good faith, to be valid
- voluntary euthanasia and physician-assisted suicide are currently illegal across Australia

## The SA Advance Directives Review

### Planning ahead: your health, your money, your life

– started 2007, completed 2009

Review Committee

1. proposed changes to law and policy
2. proposed implementation and communication strategies

Adopted by government resulting in new legislation and a single simplified Advance Care Directive replacing the 3 existing ACDs

## A different approach

### The South Australian consent law:

- required medical practitioners to assess a person's quality of life
- required the person to write specific and binding medical instructions (not health or life-management)

### The Advance Directives Review Committee recommended that:

- people describe what quality of life means to them and outcomes they want to avoid
- and medical practitioners are required to make medical decisions that respect those preferences

## The Advance Care Directives Framework

Informed by the research that underpinned the SA ACD Review  
Endorsed as national policy by Health Ministers in 2011

... includes

- nationally consistent terminology
- a Code for Ethical Practice
- Best Practice Standards for laws, forms and guidelines
- dispute resolution
- protections for health and aged care professionals who abide by ACDs

## Making ACDs work for Australians

### The Advance Care Directives Framework

- was developed to guide
  - politicians, lawyers, regulators and policy-makers
  - advance care planning programs
- takes into account the needs of
  - the person and their family
  - health and aged care professionals
- was adopted as an underpinning framework for the South Australian *Advance Care Directives Act 2013*
  - model law for Australia