

FACTSHEET 08: Medical Treatment and the Law in South Australia

A person of sound mind aged 16 or over has a common law right to refuse medical treatment including life-sustaining measures. A doctor who proceeds with treatment without the patient's consent if this can be obtained commits an offence.

This common law right was extended with restrictions to persons aged 18 and over by the Natural Death Act 1983 which provided for a simple form of Living Will. The Natural Death Act was replaced in 1996 by the Consent to Medical Treatment and Palliative Care Act 1995. Important features of the 1995 Act include:

- Provision for a Living Will permitting detailed instructions to be set out as to the type of treatment consented to or refused if the patient is in the terminal stage of a terminal illness, or in a persistent vegetative state, and no longer capable of making decisions about health care.
- Provision for the appointment of a Medical Agent to accept or refuse treatment on behalf of the patient in accordance with the patient's Living Will.
- A doctor who acts to relieve pain or distress in a patient in the terminal stage of a terminal illness incurs no civil or criminal liability if an incidental effect is to shorten the patient's life.
- Unless the patient wishes otherwise, a doctor is under no obligation to use life-sustaining measures if the effect would merely be to prolong the patient's life in a moribund state.
- Setting up a register of Living Wills and Medical Agents. This has been contracted out to MedicAlert, 216 Greenhill Rd, Eastwood, SA 5063, ph. 8274 0361 Fax 8272 3286.

The Guardianship and Administration Act 1993 provides for a person aged 18 or over to appoint an Enduring Guardian with general powers of guardianship in the event of becoming no longer competent. The powers are wider than that of a Medical Agent and include not only deciding on medical treatment in accordance with prior instructions but also where the person may live, with whom associate or have visits from, and what leisure activities or day programs may be participated in. In respect of health care decisions a Medical Agent appointed under the Consent to Medical Treatment and Palliative Care Act takes precedence over an Enduring Guardian, if the former is "reasonably available and willing to make a decision".

There are no circumstances in which a doctor may act with the intention of terminating a patient's life. A doctor who did so would either be guilty of assisting a suicide, for which the penalty is up to 14 years imprisonment if the attempt is successful, or murder, carrying a maximum penalty of life imprisonment. Consequently a medically hastened death is either not requested, or may be acted upon secretly without the benefit of professional guidelines, appropriate safeguards or open discussion with medical colleagues, members of the family, or others with an interest in the welfare of the patient.

See also [Fact Sheet 1](#) (Living Wills and Medical Agents), [Fact Sheet 5](#) (Appointing Your Own Legal Agent in SA) and [Making an Advance Directive for Health Care in South Australia](#).