

South Australia

Consent to Medical Treatment and Palliative Care (Restrictive Practices) Amendment Bill 2017

A BILL FOR

An Act to amend the *Consent to Medical Treatment and Palliative Care Act 1995*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Consent to Medical Treatment and Palliative Care (Restrictive Practices) Amendment Act 2017*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Consent to Medical Treatment and Palliative Care Act 1995*

4—Amendment of section 4—Interpretation

Section 4(1)—after the definition of *representative* insert:

restrictive practices—see section 14H;

5—Insertion of Part 2B

After section 14D insert:

Part 2B—Restrictive practices

14E—Interpretation

(1) In this Part—

authorised person means a person authorised to use restrictive practices under section 14I;

risk of harm—see subsection (2);

use of restrictive practices or to *use restrictive practices* means the use of restrictive practices in accordance with the requirements of this Part.

(2) For the purposes of this Part, a reference to behaviour of a person that constitutes a *risk of harm* will be taken to be a reference to any of the following behaviours, or any combination of the following behaviours:

- (a) the use of force against another person, or a direct or implied threat that force will be used against another person;
- (b) self-harm, or a direct or implied threat of self-harm;

- (c) behaviour that substantially increases the likelihood that physical or mental harm will be caused to the person or to any other person (whether intentionally or unintentionally);
- (d) damage to the property of another person or body, or direct or implied threats to damage such property;
- (e) any other behaviour of a kind prescribed by the regulations.

(3) For the purposes of this Part, a reference to a **medical practitioner** will be taken not to include a reference to a dentist.

14F—Application of Part

- (1) This Part is in addition to, and does not derogate from, the *Mental Health Act 2009*.
- (2) Nothing in this Part limits the operation of the *Controlled Substances Act 1984* (and, in particular, a drug may only be administered in the course of a restrictive practice or administration of medical treatment by a person authorised to do so in accordance with that Act).

14G—Minister to publish guidelines

- (1) The Minister must, by notice in the Gazette, publish guidelines for the purposes of this Part.
- (2) The Minister may, by subsequent notice in the Gazette, vary, substitute or revoke guidelines published under subsection (1).
- (3) The Minister must cause guidelines published under subsection (1) to be published on a website determined by the Minister.

14H—Restrictive practices

- (1) For the purposes of this Part, a reference to **restrictive practices** will be taken to be a reference to any of the following (or a combination of any of the following):
 - (a) the use of physical, mechanical or chemical to restrain or sedate a person;
 - (b) the confinement of a person in an area from which the person cannot leave of the person's own volition;
 - (c) the seclusion of a person on their own in an area from which the person cannot leave of the person's own volition;
 - (d) the transportation of a person from place to place;
 - (e) any other act or omission of a kind prescribed by the regulations,in each case being an act or omission done without the consent of the person.
- (2) For the purposes of this Part, an act or omission used as a restrictive practice will be taken not to constitute medical treatment (whether or not the act or omission also has a therapeutic effect).

14I—Persons authorised to use restrictive practices

- (1) For the purposes of this Part, the following persons are authorised to use restrictive practices:
- (a) medical practitioners;
 - (b) any other person, or a person of a class, authorised by the Minister for the purposes of this Part.
- (2) An authorisation under subsection (1)(b)—
- (a) must be by instrument in writing;
 - (b) may be conditional or unconditional;
 - (c) has effect for—
 - (i) if a period is specified in the instrument of authorisation—that period; or
 - (ii) if no such period is specified—until it is revoked under this section.
- (3) The Minister may, by notice in writing, vary or revoke an authorisation under subsection (1)(b).

14J—Use of restrictive practices authorised in certain circumstances

- (1) Subject to this section, an authorised person may use restrictive practices in relation to a person (the **patient**) if the authorised person believes on reasonable grounds that—
- (a) the patient is displaying behaviour that constitutes a risk of harm; and
 - (b) the patient has impaired decision-making capacity in respect of—
 - (i) a decision to submit to any medical assessment or examination that the authorised person considers reasonably necessary; or
 - (ii) a decision to consent to the administration of any medical treatment that may, in the opinion of the authorised person, be reasonably required as a consequence of, or that relates to, the behaviour that constitutes a risk of harm; and
 - (c) the use of restrictive practices is necessary—
 - (i) to minimise the risk of harm, or to prevent further harm from being caused; or
 - (ii) to enable a medical assessment or examination of the patient to be undertaken.
- (2) An authorised person must, in using restrictive practices, comply with the guidelines published under section 14G.

- (3) An authorised person may, in the relation to the use of restrictive practices in relation to a patient—
- (a) enter and remain in a place where the authorised person reasonably suspects the patient may be found;
 - (b) search the patient's clothing or possessions and take possession of anything in the patient's possession that the patient may use to cause harm to themselves or others, or to damage property;
 - (c) retain anything so taken from the possession of the patient for as long as is necessary for reasons of safety (and then return the thing to the patient or otherwise deal with the thing according to law).
- (4) To avoid doubt, an authorised person may use restrictive practices in relation to a patient—
- (a) without the consent of the patient; or
 - (b) despite a refusal of the patient to consent to the use of restrictive practices.
- (5) To avoid doubt, an authorised person may use restrictive practices in relation to a patient who is a child.
- (6) Subject to section 14K(3), restrictive practices may be used in relation to a patient—
- (a) for as long as is reasonably necessary to enable or facilitate the medical assessment or examination of the patient; or
 - (b) for a period of 24 hours,
- whichever is the lesser.
- (7) An authorised person who uses restrictive practices in relation to a patient must cause a written notice setting out the information required by the regulations to be given to the patient.
- (8) An authorised person may be assisted in the use of restrictive practices by such other persons as the authorised person thinks fit.
- (9) Nothing in this section authorises the use of restrictive practices—
- (a) as a punishment or for the convenience of others; or
 - (b) to address inadequate levels of staffing, equipment or facilities.

14K—Medical treatment may be provided without consent in certain circumstances

- (1) Despite any other provision of this Act, or any other Act or law, a medical practitioner may lawfully administer medical treatment (not being prescribed treatment) to a person (the *patient*) without consent if—
- (a) restrictive practices are being used in relation to the patient in accordance with section 14J; and
 - (b) either—
 - (i) the medical treatment is reasonably necessary to treat an injury arising out of the behaviour constituting the risk of harm to which the use of restrictive practices relates; or
 - (ii) the medical practitioner believes on reasonable grounds that—
 - (A) the risk of harm to which the use of restrictive practices relates is wholly or partly caused by a particular medical condition or conditions; and
 - (B) the treatment of the medical condition or conditions is reasonably necessary to minimise the risk of harm, or to prevent further harm from being caused; and
 - (c) the patient has impaired decision-making capacity in respect of a decision to consent to the administration of such medical treatment.
- (2) To avoid doubt, subsection (1) applies—
- (a) whether the patient is a child or is of or over 16 years of age;
 - (b) whether or not the patient has given an advance care directive;
 - (c) whether or not a substitute decision-maker, guardian or person responsible for the patient has been appointed or is available;
 - (d) whether or not the patient, or a substitute decision-maker, guardian or person responsible for the patient, has refused consent to the proposed medical treatment.
- (3) A medical practitioner proposing to administer medical treatment to a patient under this section may continue to use restrictive practices in relation to the patient—
- (a) for as long as is reasonably necessary to enable the medical treatment to be administered; or
 - (b) for a period of 24 hours,

whichever is the lesser.

(4) A medical practitioner must, in relation to the administration of medical treatment to a patient under this section, comply with the guidelines published under section 14G.

(5) A medical practitioner who administers medical treatment to a patient under this section must cause a written notice setting out the information required by the regulations to be given to the patient.

(6) In this section—

medical condition includes intoxication by a drug or alcohol or both;

prescribed psychiatric treatment means—

(a) prescribed psychiatric treatment within the meaning of the *Mental Health Act 2009*; and

(b) any other treatment of a kind prescribed by the regulations;

prescribed treatment means—

(a) prescribed psychiatric treatment; or

(b) prescribed treatment within the meaning of the *Guardianship and Administration Act 1993*.

14L—Limitation of liability

(1) An authorised person, or a person assisting an authorised person, incurs no civil or criminal liability for an act or omission relating to the use of restrictive practices (being an act or omission done or made in good faith and without negligence).

(2) A medical practitioner who administers medical treatment to a patient in accordance with section 14K, or a person participating in the treatment or care of the patient under the medical practitioner's supervision, incurs no civil or criminal liability for an act or omission done or made—

(a) in accordance with that section; and

(b) in good faith and without negligence; and

(c) in accordance with proper professional standards of medical practice.

14M—Offence to hinder or obstruct authorised person

A person who hinders or obstructs an authorised person in relation to the use of restrictive practices is guilty of an offence.

Maximum penalty: \$25 000.

14N—Reporting

(1) An authorised person who uses restrictive practices in relation to a patient must make such records as may be required by the regulations.

Maximum penalty: \$25 000.

- (2) An authorised person must keep the records referred to in subsection (1) in accordance with the requirements set out in the regulations.

Maximum penalty: \$25 000.

5 **Schedule 1—Related amendments**

Part 1—Amendment of *Advance Care Directives Act 2013*

1—Amendment of section 12—Provisions that cannot be included in advance care directives

Section 12(1)—after paragraph (b) insert:

- 10 (ba) a provision that comprises a refusal of medical treatment forming part of a restrictive practice used in accordance with Part 2B of the *Consent to Medical Treatment and Palliative Care Act 1995*;