
SUBMISSION

Advance Care Directives (Review) Amendment Bill 2021

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Introduction

Lived Experience Australia (hereafter LEA) is a national representative organisation for Australian mental health consumers and carers, formed in 2002 with a focus on the private sector. Our core business is to

advocate for systemic change, empowerment of consumers in their own care, promoting engagement and inclusion of consumers and carers within system design, planning and evaluation and most importantly, advocating for consumer choice and family and carer inclusion.

LEA welcomes this Bill to amend the **Advance Care Directives (Review) Amendment Bill 2021**.

LEA shares the view of many in regarding Advance Care Directives as essential to a person's ability to decide how they want any future decisions about health care, where they live (accommodation arrangements) personal affairs and the appointment of any substitute decision makers acted upon.

LEA supports and notes in the introduction and readings of Hon R.L. Lucas (Treasurer) on behalf of the Minister for Health wherein he talks about the principles of self-autonomy and believing that a person's wishes are respected underpins Advance Directives.

Amendments to be moved by Minister for Health and Wellbeing

36A—Certain provisions of advance care directive of no effect where suicide attempt or self-harm

LEA supports the inclusion of this amendment.

Sadly, suicide thinking, suicide attempts and self-harm are increasing despite the initiatives to reduce the incidence.

LEA is aware that suicide is often based upon environmental factors such as loss of employment, financial or relationship breakdowns, etc which at the moment can certainly make a person's reactions to one of hopelessness, this thinking can change with time, good treatment and support both from health professionals and family and friends.

LEA supports the inclusion of the amendment which allows health care professionals to ignore any provisions with an Advance Care Directive as it specifically pertains to a suicide attempt or self-harm.

With the SA Voluntary Assisted Dying Act coming into effect on 1 July 2021, people with unsustainable and in their view unmanageable health conditions who decide to die with dignity are now not likely to attempt suicide and therefore the Advance Care Directive amendment will probably not have effect in these cases.

Other issues

However, there some concerns or queries LEA wishes to raise.

1. The Act creates a single Advance Care Directive 'to replace the existing Enduring Power of Guardianship, Power of Attorney and Anticipatory Directions' documents.
2. Requirements in relation to appointment of substitute decision makers and their empowerment.
3. Amendments in relation to the Office of the Public Advocate where a reasonable suspicion of elder abuse exists
4. Appointment of a Guardian
5. Interactions with other legislation i.e. (Mental Health Act, NDIS Act)

Regarding all these points, people with mental illness could be seen to be handled differently. We bring to your attention that mental illness, whilst chronic in many people, can also be within that chronicity, episodic in nature. Whilst this complicates matters, people are still able to provide their wishes in relation to what they would like to happen in cases noted above i.e., medications, treatments, health care treatments, who is to be involved, where they prefer to live etc.

LEA notes this Act will replace existing instruments

LEA was unaware this Act will replace existing instruments as noted above but also note the interaction between these and the SA Mental Health Act which we speak to below and wonder what this situation is.

Substitute decision makers

Substitute decision makers in terms of family, or carers are sometimes now used without an Advance Directive in place. LEA strongly supports this being part of any direction and the resulting action of empowering them to assist and support.

Abuse

Like elder abuse, people with complex and serious mental illness are equally vulnerable to abuse. LEA supports the involvement of the Public Advocate in this regard but does have strong reservations in terms of the appointment of a guardian. If this is a someone of the person's choosing, we agree, however if this is at the discretion of the Public Advocate and involves organisational guardianship such as the Public Trustee, we have strong concerns that there is little opportunity for the person to reclaim their independence once that has occurred. Families also struggle to retain their support over financial, medical, living arrangements etc for the person they care for.

Interactions with other legislation

The last issue is that of this legislation interacting with other. We draw your attention to the *SA Mental Health Act 2009*.

Under this legislation, despite any instructions from a person within any instrument such as an Advance Care Directive, Enduring Power of Guardianship or Power of Attorney etc, individuals can be detained involuntarily (against their will), required to comply with Community Treatment Orders which ensure they take medications also sometimes against their will and can be required to undertake Electroconvulsive treatment (ECT) which is a medical procedure, which they may prefer not to receive.

Similar to this Act, we also raise the issue around the *National Disability Insurance Scheme Act 2013*. A strong emphasis is placed upon enabling people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports.

Furthermore, the *Carer Recognition Act 2010* also outlines principles about how carers are engaged and involved in a person's health and other areas of support.

Thank you for the opportunity to contribute to the Opposition's briefing on this matter.

Please feel free to contact the below with any queries or clarifications you may require.

Contact

We would be very keen to provide further clarification or opportunity to further discuss or concerns. Our details are below.



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