



# **Dispute Resolution, Supported Decision Making and Elder Abuse**

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# South Australian Context



- \* Advance Care Directives Act, 2013
- \* Dispute Resolution
- \* Supported decision making
- \* Preventing and detecting Elder Abuse

# Advance Care Directives

## Advance Care Directives Act 2013

- Rights based legislation - upholds the rights of people to make their own decisions for as long as possible and to guide how their decisions are made if they are not able to make them themselves due to impaired capacity
- Establishes the (ACD) Dispute Resolution Service
- Provides powers to the Public Advocate to seek revocation of Substitute Decision Makers in cases where the Principles of the Act are not being upheld in the decision making process
- Provide power to SACAT to revoke a Substitute Decision Maker if they have been negligent or in default in the exercise of power under an Advance Care Directive

# Advance Care Directives Act 2013

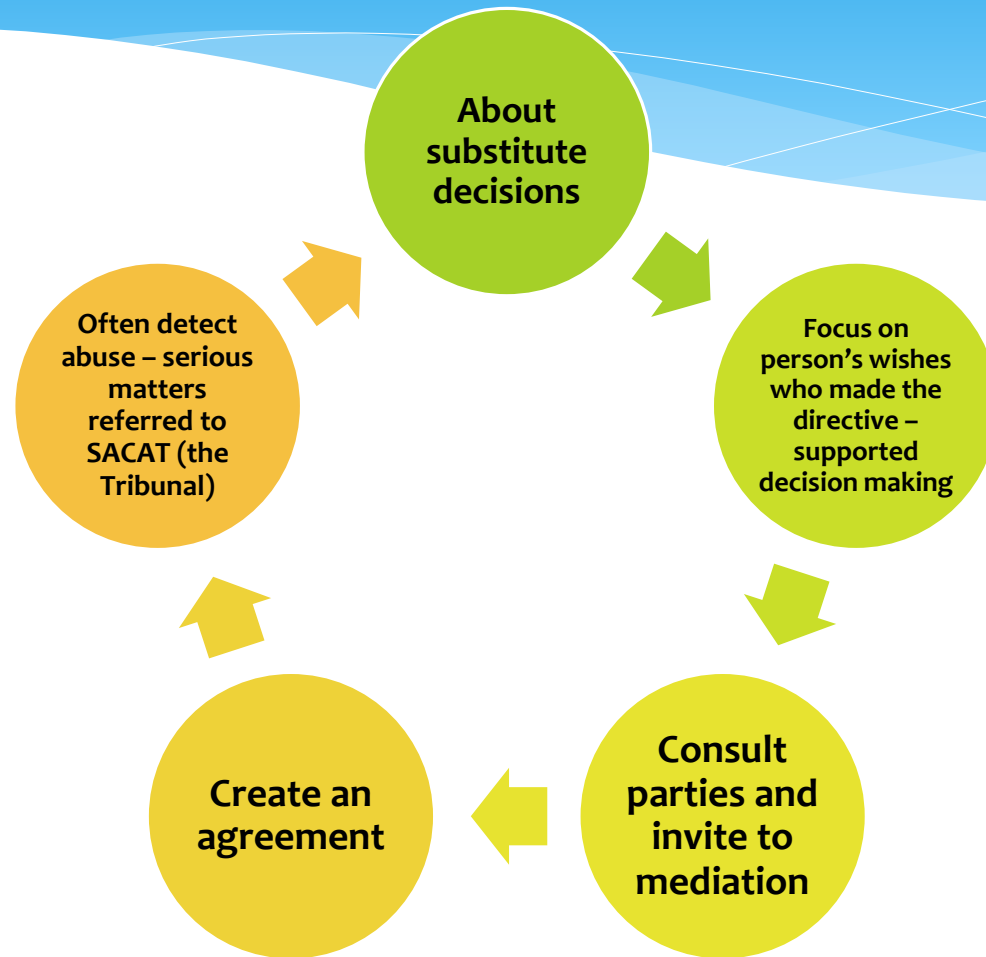


# Advance Care Directives Act 2013

## Section 10 – Principles

- \* (d) *“a person must be allowed to make their own decisions about their health care, residential and accommodation requirements and personal affairs to the extent that they are able, **and be supported to enable them to make such decisions for as long as they can**”*
- \* (e) *“a person can exercise their autonomy by making **self-determined decisions, delegating decision making to others, making collaborative decisions within a family or community, or a combination of any of these**, according to the person’s culture, background, history, spiritual or religious beliefs”*

# Dispute Resolution Service



# Dispute Resolution Service

## In the past financial year:

- \* **98** Applications received
- \* **43** matters resolved
- \* **22** matters referred to SACAT
- \* **16** matters closed (parties did not respond; no current ACD; financial issues)
- \* **3** Clients deceased (palliative care matters)
- \* **9** Applications Withdrawn (information provided ; client had capacity; matter in other jurisdiction)
- \* **5** matters ongoing

# Dispute Resolution Service Referrals to SACAT

## Reasons for referrals to SACAT

- \* **6** - Declaration re validity of documents
- \* **3** - Elder Abuse
- \* **6** - Parties not willing to mediate
- \* **2** - SDM wanted to renounce role - client did not have capacity
- \* **3** - OPA made section 52.2 application
- \* **1** - Mediation unsuccessful
- \* **1** - Unsafe to Mediate



# Dispute Resolution Service Trends and Issues

Most conflict involved family members of older relatives with impaired decision making capacity

- \* Allegations of abuse of an older person, in particular, neglect of proper care and protection.
- \* Family members and significant others being denied access to the person.
- \* Disputes over accommodation
- \* SDM withholding information from other family members

# Dispute Resolution Service

## Trends and Issues continued

- \* Disputes - end-of-life decisions of a person who was palliative.
- \* Substitute decision makers - renouncing their appointment.
- \* The person who made the Advance Care Directive seeking to revoke the appointment of a substitute decision-maker/s.
- \* Challenges to the decisions of substitute decision-makers
- \* Disputing whether decisions were made in keeping with the principles of the *Advance Care Directives Act 2013*.

# Supported Decision Making

- \* UNCRPD – Article 12
- \* ALRC Reports – Equality, Capacity and Disability and Elder Abuse
- \* 4 National Decision-Making Principles
  - \* The equal right to make decisions
  - \* Support
  - \* Will, preferences and rights
  - \* Safeguards
- \* Advance Care Directives Act (SA), 1993 principles

# Supported Decision Making



SA OPA  
Projects

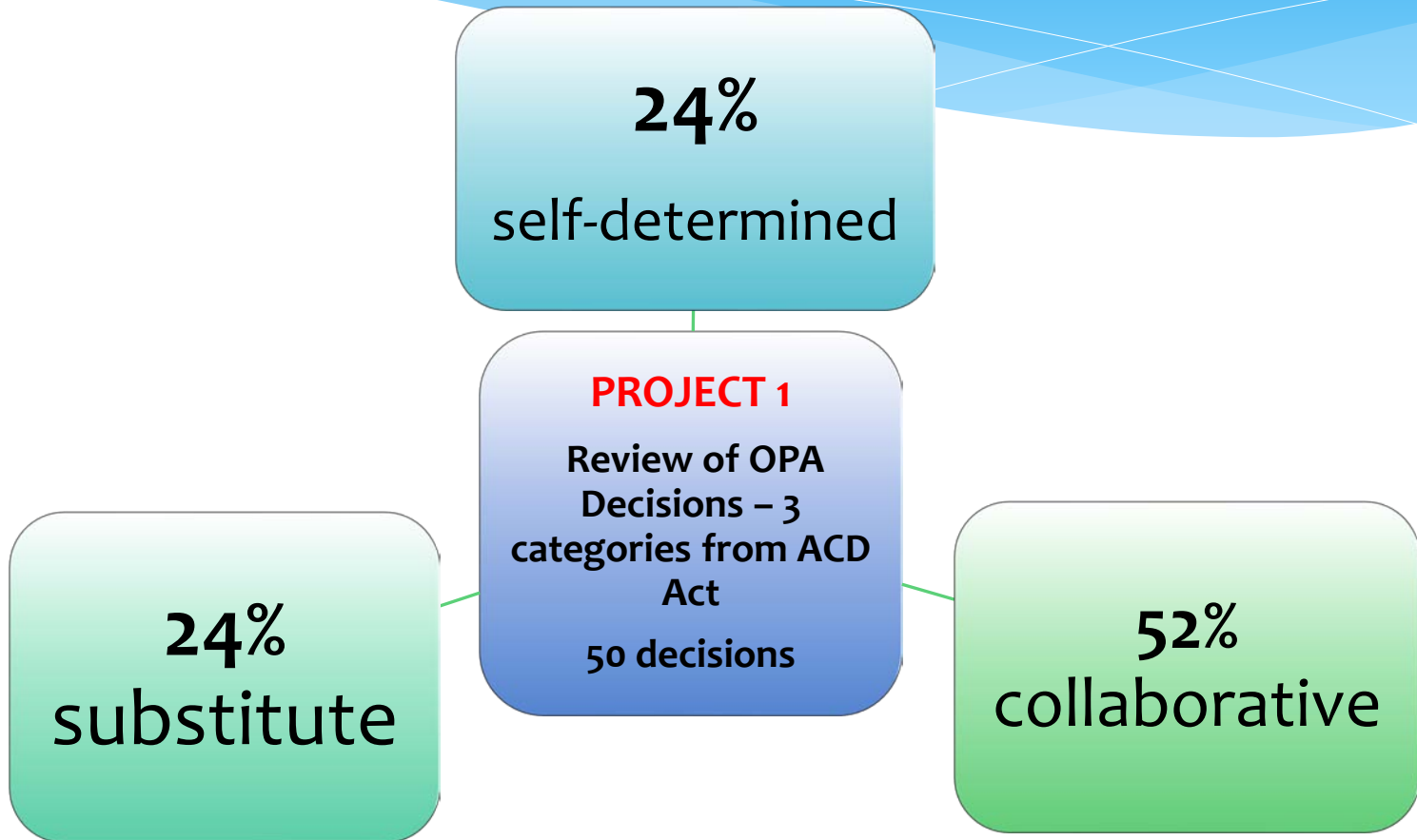
- 4 projects
- 1 in 2012
- 3 since 2016

# Decision Making Categories

Three categories based on the ACD Act principles

- **Self-determined (green)**
- **Collaborative (yellow)**
- **Substitute (red)**
- Coding of decisions in 2 projects – OPA decisions and Lifetime Support Authority

# Supported Decision Making Projects



# OPA Supported Decision Making Projects

## Issues:

- No recording categories on system
- Differences in staff understanding
- Text based records – time consuming
- Tension being a substitute decision maker

# OPA Supported Decision Making Projects

## **PROJECT 2** **Refining categories and SA legislation**

- Legislative review of *Guardianship and Administration Act 1993*
- Consultation with legal professionals, service providers and OPA staff
- Categories useful but need context (qualitative) – a continuum may help
- SA Legislation update RE specific and supported decision making capacity; definitions; representative versus ‘guardian’



# OPA Supported Decision Making Projects

## **PROJECT 3** **Lifetime Support Authority grant**

- Acquired brain injury
- Implement supported decision making
- Develop policy framework and practice guide
- Practice exercise – using supporters, facilitators, monitor (quality team)
- Used categories to record decisions
- Report almost complete - % of self-determined and collaborative decisions

# Preventing and Detecting Abuse

## Dispute Resolution Service

DRS – educates parties and families – how – focus on the person, not the long standing conflict

Enables education about the role of substitute decision maker

Many substitute decision makers don't understand their role

Abuse often apparent, but not always substantiated

When serious abuse is detected – options – education, referral to SACAT and/or SAPOL

# Preventing and Detecting Abuse



**Supported  
Decision  
Making**

- \* Human rights based
- \* Focuses on the decision maker and supportive roles
- \* Education RE objective process
- \* Reduced risk of abuse
- \* Difficult to measure and record

# Summary

DRS assists with educating, preventing and detecting abuse

Supported decision making is a process not well understood or implemented – educated RE roles – helps prevent abuse

Done well – the voice of the person is heard and prevents abuse

Legislative reform

More to do...