

Advance Care Directives

Wills & Estate Planning series

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What is an Advance Care Directive?

Who should have one?

How does it operate?

Can it be cancelled?

In this series, we provide the answers to these questions and many more about Advance Care Directives.



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What is an Advance Care Directive?

An Advance Care Directive is a legal form that allows people over the age of 18 years to:

- record their wishes, preferences and directions in relation to their future health care, end of life, accommodation and personal matters; and/or
- appoint one or more persons called 'Substitute Decision-Makers' to make decisions concerning those issues on their behalf at a time when they are unable to do so themselves.

An Advance Care Directive also enables a person to make "binding refusals of health care" in particular circumstances. For example, in the case of terminal illness the Advance Care Directive enables you to refuse particular types of health care such as being artificially sustained on a life support system where you would otherwise not survive.

Should you appoint Substitute Decision-Makers?

Unlike an Enduring Power of Attorney or a Will, the appointment of another person is not compulsory when making an Advance Care Directive. It is possible to merely record your wishes on the form without appointing a Substitute Decision-Maker.

There are however sound reasons why the appointment of a Substitute Decision-Maker should be made, including:

- There will be a trusted person (or persons) who will be able to carry out your wishes and speak on your behalf when you are unable to do so;
- There is a higher degree of certainty that your wishes will be carried out if you entrust someone to act as your Substitute Decision-Maker;
- There are likely to be matters of a personal nature that are known to a Substitute Decision-Maker which would otherwise not be known to health care professionals or others who are attending to your medical/health care needs.

Before appointing a Substitute Decision-Maker, it is highly desirable to speak to the person you wish to appoint to obtain their consent and to discuss any specific wishes or preferences you may have with them. It will be necessary for the Substitute Decision-Maker to accept their appointment by signing the Advance Care Directive form prior to you doing so.

When does the Advance Care Directive operate?

An Advance Care Directive only becomes operative if you are no longer able to make your own decisions concerning your health care, medical matters, living arrangements and other life style decisions. The Advance Care Directive does not deal with decisions concerning your finances or legal matters. Those matters are dealt with under a Power of Attorney.

Does the Advance Care Directive replace an Enduring Power of Guardianship made previously?

Yes, if you make an Advance Care Directive it will replace a previously made Enduring Power of Guardianship, a Medical Power of Attorney or an Anticipatory Direction.

If however you choose not to make an Advance Care Directive then a previously made Enduring Power of Guardianship, Medical Power of Attorney or Anticipatory Direction will still be valid.

What cannot be included in an Advance Care Directive?

An Advance Care Directive cannot include provisions which are unlawful, which would require an unlawful act to be performed or which would cause a health practitioner or other person to contravene an applicable professional standard or code of conduct, or compromises a refusal of mandatory medical treatment or other provisions prescribed by law.

'Mandatory medical treatment' refers to medical treatment under a Community Treatment Order or an Inpatient Treatment Order or other medical treatment under the Mental Health Act.

Can an Advance Care Directive be cancelled?

It is possible to revoke an Advance Care Directive by signing an Advance Care Directive Revocation form. It is necessary for the person revoking an Advance Care Directive to be competent and understand the consequences of revoking the Advance Care Directive.

If a person who has made an Advance Care Directive is not competent (that is, they have lost mental capacity) then it will be necessary for the South Australian Civil and Administration Tribunal ("SACAT") to make an Order revoking the Advance Care Directive.

The Tribunal will need to be satisfied that the person who gave the Advance Care Directive understands the nature and consequences of the revocation and that the revocation genuinely reflects the wishes of the person and that it is appropriate in all the circumstances for it to be revoked.