



Advance Care Directive (SA)

Who will make decisions about your health and welfare when you can't?

An **Advance Care Directive (ACD)** is a legal document that enables you to appoint someone to make medical and lifestyle decisions on your behalf when you are unable to.

As of 1 July 2014, the ACD replaces all previous South Australian legal documentation used to plan your future care, including an **Enduring Power of Guardian, Medical Power of Attorney or Anticipatory Direction**. However, if you have put any of these documents in place prior to 1 July 2014, they will continue to be effective until revoked or replaced with an ACD.

Why is an Advance Care Directive important?

Everyone hopes that they will always be capable of making decisions about their own welfare. However, sometimes it is not possible for people to make their own decisions. For example, if someone becomes seriously ill, is badly injured, is rendered unconscious or suffers from a mental health condition, it may be impossible for them to make decisions for themselves. An ACD is vital to deal with these sorts of situations, so that there is always someone you trust to make the important decisions for you.

Many people think that they can just make an ACD when they become ill or are injured. Unfortunately, that is not possible. If a person has already lost the capacity to make their own decisions, they have also lost the legal capacity to make an ACD.

Who can I appoint?

The ACD requires you to appoint a 'Substitute Decision-Maker'. This is the person who will make decisions on your behalf if you are unable to do so. The person you choose to act as your Substitute Decision-Maker should be someone who you trust and who is capable of making decisions in your best interests.

The person you appoint:

- Must be over 18 years of age;
- Must understand what the ACD is used for and when it will apply; and
- Cannot be responsible for providing treatment or care to you at the time of appointment (i.e. you cannot appoint your doctor or paid carer).

You may wish to appoint more than one Substitute Decision-Maker. If you appoint more than one, you will need to specify whether you want them to make joint or separate decisions.

What types of decisions can be made by my Substitute Decision-Maker?

Your Substitute Decision-Maker will be responsible for making decisions about where you live, what health care you receive, and other personal decisions (e.g. making arrangements for your children if you are temporarily in hospital).



Can I give directions about my personal preferences and wishes?

Yes, an ACD allows you to write down instructions, preferences and wishes concerning your future health care, preferred living arrangements and/or other personal matters.

An ACD also allows you to specify any **binding provisions** you wish to put in place. A **binding provision** is a refusal to receive certain medical treatment, and must be followed by your Substitute Decision-Maker and health practitioner. A binding provision can only be overridden if reasonable evidence exists to suggest you have changed your mind or the objection does not apply to the current circumstances.

You are not able to specify any wishes, directions or binding provisions in your ACD that are unlawful or would require an unlawful act to be performed.

What types of decisions cannot be made by my Substitute Decision-Maker?

A Substitute Decision-Maker cannot make a Will for you, vote on your behalf, consent to marriage, manage your finances, transfer your property, or disregard any binding provisions you have stated in your ACD. The law also prevents your Substitute Decision-Maker from making any illegal decisions (e.g. voluntary euthanasia), refusing the provision of food or water to you, or refusing the provision of medicine to you to relieve pain or distress (palliative care).

What happens if I do not appoint a Substitute Decision-Maker?

If you do not appoint a Substitute Decision-Maker and then circumstances arise where one is needed, a family member or close friend may be asked to consent to or refuse health care on your behalf. This person is referred to as a 'Person Responsible'. You are not able to decide who will act as your Person Responsible, it will be determined under the relevant law.

When can an Advance Care Directive be used?

The appointment of a Substitute Decision-Maker only takes effect during any time that you have lost your capacity to make decisions.

- An assessment of a person's decision-making capacity includes the following considerations:
- Whether the person can understand information relevant to the decision;
- Whether the person can retain information over a short period of time;
- Whether the person can use relevant information to arrive at a decision; and
- Whether the person can communicate their decision in any form.

It will be up to your Substitute Decision-Maker to consult with a health practitioner about your capacity to make decisions before taking steps on your behalf.

What doesn't an Advance Care Directive cover?

An ACD does not cover decisions relating to your legal and financial affairs. Accordingly, it is important that you also consider putting an **Enduring Power of Attorney** document in place to appoint someone to manage your legal, financial and property affairs.

What next?

If you would like to speak to someone about putting in place an Advance Care Directive, call us on **1300 654 590** or email us at wehelp@adlvlaw.com.au.

Further information can also be found on our website at www.adlvlaw.com.au.