

Advance Care Directives

What is an Advance Care Directive?

An Advance Care Directive is a legal document which enables you to appoint one or more Substitute Decision-Makers to make decisions on your behalf concerning future medical, health care and living arrangements if you lose mental capacity and are unable to make such decisions yourself.

It may also be used to specify your wishes, preferences and instructions for future health care, end of life, living arrangements and personal matters.

The appointment of Substitute Decision-Makers and the ability to specify future health care is prescribed by the Advance Care Directives Act 2013.

An Advance Care Directive cannot be used to make financial decisions, that is performed by appointing an Enduring Power of Attorney.

Why should you complete an Advance Care Directive?

All adults should have an Advance Care Directive to ensure that your wishes concerning medical care, welfare and lifestyle are carried out and advocated on your behalf should you be unable to make those decisions yourself.

You may nominate more than one Substitute Decision-Maker to make these decisions and you may appoint them either jointly, jointly and severally or as alternatives. You may also refrain from appointing any Substitute Decision-Maker and use the Advance Care Directive to simply specify what future medical and health care you wish to receive.

It is now common practice for Hospitals, Nursing Homes and Retirement Villages to request or require that patients and residents have a valid Advance Care Directive.

If you lose mental capacity and have not completed an Advance Care Directive medical care and treatment you oppose may take place and those you do not wish to be involved in important decisions concerning your medical care, health and lifestyle issues may gain some legal right.

Refusal of Health Care

You may specify in an Advance Care Directive certain medical and health care that is to be refused. If you have written a refusal of health care, it must be followed

if relevant to your circumstances at the time. All other information written in your Advance Care Directive is advisory and should be used as a guide to decision-making by your Substitute Decision-Makers (if any) and health practitioners.

It is important to make sure you have written down when, or under what circumstances, any refusals of health care apply. A health practitioner can only override a refusal of health care if there is evidence to suggest you have changed your mind but did not update your Advance Care Directive, or, the health practitioner believes you didn't mean the refusal of health care to apply in the current circumstance.

It is therefore critical that your Advance Care Directive, and any anticipated refusal of health care, be prepared by an experienced solicitor so that ambiguity and confusion is avoided. It is also important to note that you cannot refuse compulsory mental health treatment as listed in a community or involuntary treatment order, if you have one, and cannot validly seek health care if unlawful, for example voluntary euthanasia.

Existing Enduring Power of Guardianship and appointment of Medical Attorneys

A new Advance Care Directive will replace all other documents you may have completed previously, for example an Enduring Power of Guardianship, Medical Power of Attorney or Anticipatory Direction.

Any valid Enduring Power of Guardianship, Medical Power of Attorney or Anticipatory Direction made prior to 1st July 2014 will remain valid, however, we encourage everyone to regularly review their estate planning documents every 2-5 years.

How do you complete an Advance Care Directive?

You must be over 18 years of age and sign a document in the presence of a suitable witness, in most circumstances a solicitor of our firm. Any Substitute Decision-Makers that you appoint must also sign the document agreeing to be bound by your directions.

It is therefore necessary that you seek the consent of those you intend to appoint and ensure that they understand their rights and obligations.

A person is prohibited from being appointed your Substitute Decision-Maker if they are, in a professional or administrative capacity, directly or indirectly responsible for or involved in your medical care or treatment. You are therefore precluded from appointing your treating doctor as a Substitute Decision-Maker.

Information for persons who are appointed as Substitute Decision-Makers

By signing the Advance Care Directive you are stating that you agree to be the person's Substitute Decision-Maker and that you understand your role and responsibilities. You should make sure you understand what types of decisions you will be able to make and how the person wants you to make those decisions for them.

After you are appointed you should keep a certified copy of the completed, signed Advance Care Directive where you can easily find it.

What is the role of a Substitute Decision-Maker?

As a Substitute Decision-Maker you must give consideration to what would, in your opinion, be the wishes of the donor if they were not mentally incapacitated, based upon any evidence available to you.

You must follow all lawful written directions provided to you. Generally, you must always act in the best interests of the donor, this means you must act:

- as an advocate for the donor,
- in such a way as to encourage the donor to participate as much as possible in the life of the community,
- in such a way as to encourage and assist the donor to become capable of caring for themselves, and
- in such a way as to protect the donor from neglect, abuse or exploitation.

As a Substitute Decision-Maker you can make all the decisions the person wanted you to make, but you cannot:

- make a decision which would be illegal, such as requesting voluntary euthanasia,
- refuse food and water to be given to them by mouth, and
- refuse medicine for pain or distress (for example palliative care).

You cannot make decisions about money, finances and assets. These decisions need to be made by a person appointed under an Enduring Power of Attorney (financial).

When does the power commence?

The power granted to you does not commence until the donor, who granted the power to you, becomes mentally incapacitated and unable to make decisions regarding their own medical care and welfare.

The period of incapacity may not be permanent. In this case the power granted to you might be enforceable only during the period of incapacity.

More than one Substitute Decision-Maker may be appointed, however the Advance Care Directive will determine whether your appointment is made jointly with another, jointly and severally with another or as an alternative.

Suspension or Revocation of your Appointment

The author of the Advance Care Directive may revoke the power granted to you at any time whilst they have mental capacity by executing another document and that revocation being provided to you.

Once this occurs your power is terminated.

If the author of the Advance Care Directive becomes mentally incapacitated, and the power granted to you has not been revoked, you are unable to renounce your appointment without an order from the Guardianship Board.



INCORPORATING
Carpenter & Associates

Greg Welden LL.B. GCLP.
greg@welcolawyers.com.au

Jason Coluccio BLAWS. BA. GDLP
jason@welcolawyers.com.au



FINDON OFFICE

179 Grange Road,
Findon SA 5023
PO Box 1233,
Flinders Park SA 5025
T 08 7225 8703

ADELAIDE, PROSPECT & PAYNEHAM OFFICES

By appointment only

welcolawyers.com.au

