

WHAT IS AN ADVANCE DIRECTIVE?

An advance directive is a legally binding document that expresses a person's wishes or directions in advance in the event that mental capacity is lost in the future. Only people over 18 years of age can make advance directives.

For an advance directive to be legally valid, the person making it must have the mental capacity to understand its nature and effect and the consequences of completing and signing the document. This must be done without any coercion, pressure, or influence by others.

→ See *Fact Sheet 22: Mental capacity and advance directives*

WHY MAKE AN ADVANCE DIRECTIVE?

Legally appointing another person (or people) to make decisions in the event of loss of mental capacity is a way of planning ahead and ensuring that the person's wishes are followed. If a person makes an advance directive, then the person that he or she has appointed has the legal authority to act on his or her behalf.

WHAT HAPPENS IF THERE IS NO ADVANCE DIRECTIVE?

If a person loses his or her capacity to make decisions, then, in most cases, family members and friends can step in and make decisions for that person informally.

→ See *Fact Sheet 23: Informal arrangements for people with mental incapacity*

In situations where decisions cannot be made informally, or if problems arise with the operation of an advance directive, then an application to the Guardianship Board for a Guardianship Order (lifestyle and medical decisions) or an Administration Order (financial decisions) may be necessary.

→ See *Fact Sheets 4: Guardianship Orders and 5: Administration Orders*

HOW DOES A PERSON MAKE AN ADVANCE DIRECTIVE?

Advance directives are forms that must be completed by the person making the appointment, the person (or people) being appointed, and a witness. The forms specify on them who is an authorised witness for that form.

Basically, there are two ways for a person to make an advance directive. The first is the 'do-it-yourself' method - purchase the forms, complete the document and organise an authorised person to witness it. There are do-it-yourself kits available for purchase in relation to both Enduring Powers of Attorney and Enduring Powers of Guardianship (see over for details). The second way of making an advance directive is to seek professional advice – a person can employ a solicitor or trustee company to draw up and witness the document.

WHAT ADVANCE DIRECTIVES ARE THERE?

There are currently four different advance directives in South Australia. Each covers a specific area of decision making.

Financial decisions

Enduring Power of Attorney (Powers of Attorney and Agency Act 1984)

This document allows the appointment of an attorney to make decisions about financial, property and related legal matters.

- Forms and the Enduring Power of Attorney: Do-it-yourself kit (containing instructions and forms) are available from Service SA Government Information Centres and Legal Services Commission offices.

Lifestyle and medical decisions

Enduring Power of Guardianship (Guardianship and Administration Act 1993)

This document allows the appointment of an enduring guardian to make lifestyle and medical treatment decisions. It also allows a person to record his or her wishes in relation to lifestyle decisions and medical treatment.

- Forms and the Enduring Power of Guardianship: Do-it-yourself kit (containing instructions and forms) are available from Service SA Government Information Centres and Legal Services Commission offices.

Medical decisions only

Medical Power of Attorney

(Schedule 1 - Consent to Medical Treatment and Palliative Care Act 1995)

This document allows the appointment of a medical agent to make medical treatment decisions.

- Forms are available from our office and the Palliative Care Council of SA.

Anticipatory Direction

(Schedule 2 - Consent to Medical Treatment and Palliative Care Act 1995)

This document provides a way of legally recording a person's wishes and directions about end of life decisions. It allows a person to record the kind of treatment he or she wants, or does not want, if he or she is in the terminal phase of a terminal illness or in a persistent vegetative state. It does not involve the appointment of another person, and must be followed by those responsible for the person's medical care.

- Forms are available from our office and the Palliative Care Council of SA.

CONTACT ADDRESSES

- **Service SA, Government Information Centre**, 108 North Terrace, Adelaide SA (Tel 13 23 24, Web and online shop www.service.sa.gov.au). There are a number of Customer Service Centres and Rural Agents
- **Legal Services Commission**. Offices at Adelaide, Elizabeth, Holden Hill, Mt Barker, Noarlunga, Port Adelaide and Whyalla. Telephone legal advisory service: 1300 366 424 (9am - 4:30pm, Monday - Friday), Web www.lsc.sa.gov.au
- **Palliative Care Council of SA**. 202 Greenhill Road, Eastwood (Tel: 8291 4137 Fax: 8291 4122)

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