

Advance Care Directive Factsheet

A clear path to care

Advance Care Directives

The Advance Care Directives Act 2013 empowers adults to make legal arrangements for their future health care, end of life, preferred living arrangements and other personal matters, and/or appoint one or more Substitute Decision Makers to make decisions on their behalf when they are unable to do so themselves. It promotes a rights based patient centred approach to health care and supports the National Safety and Quality Service Standards: 2- Partnering with Consumers and 9- Recognising and Responding to Clinical Deterioration in Acute Health Care.

What is an Advance Care Directive (ACD)?

From 1 July 2014, the new ACD will replace Enduring Powers of Guardianship, Medical Powers of Attorney and Anticipatory Directions with a single ACD Form. (Please note: if people have previously completed these documents, they will continue to have legal effect according to the terms of the document after 1 July 2014).

An ACD is a legal form for people aged over 18 years. Adults can:

- > Write down instructions, values and wishes for future health care, residential, accommodation and personal decision-making.
- > Appoint one or more Substitute Decision-Makers (SDM) to make decisions on their behalf.

An ACD takes effect or applies during any period of impaired decision-making capacity, which may be temporary or permanent.

Who can give an ACD?

An ACD can be given by anybody over the age of 18 year of age who understands what an ACD is, what it will be used for and when it will apply. An ACD must be made without any coercion, pressure or influence by others.

When does an ACD take effect?

A valid ACD takes effect or applies during any period of impaired decision-making capacity.

Health practitioners can rely on an ACD (and/or the decision of a SDM) in good faith and without negligence and are protected from criminal and civil liability for doing so.

A valid ACD is one which is signed by the person and witnessed by an authorised witness. Health practitioners can rely on a valid ACD in good faith and have legal protection for doing so. The witness role is to be satisfied that the person is competent and is completing the ACD of their own free will.

If it is witnessed it means that the person was competent when they completed the ACD unless there is clear evidence to suggest otherwise eg you knew the person at the time they wrote their ACD and you did not think they understood what they were doing, or you believed that someone was coercing that person to write one.

Who can witness an ACD?

Authorised witnesses include registered professionals such as doctors, nurses, pharmacists, psychologists, teachers, accountants, employees of a government authority with more than five years service (eg social workers in a hospital), lawyers, Justices of the Peace, Ministers of religion and must be **independent** of the person giving the ACD.

This means that the witness must not be:

- > a person who may be a beneficiary, either directly or indirectly of the person's estate (usually a relative)
- > a professional providing care either directly or indirectly to the person for example a doctor, nurse or aged care staff (or may be likely to provide care in the future eg GP in a country area)
- > a person in a position of authority in a hospital or nursing home eg aged care manager or Director of Nursing/Medicine
- > appointed as a SDM.

What is a Substitute Decision-Maker (SDM) and what decisions can they make?

A person giving an ACD can appoint one or more adults to be Substitute Decision-Makers (SDMs) who make decisions on their behalf when the person is not able to do so themselves. A SDM can be appointed to make all decisions (eg health care, residential or personal decisions) or the person could put conditions on their appointment (see part 2b of the ACD form).

An SDM cannot be a paid professional carer such as a doctor, nurse or aged care worker.

An appointed SDM has the same legal authority as the person who gave the ACD and can make all the lawful decisions the person could have made themselves if they had full decision-making capacity. SDMs cannot refuse pain relief or the natural provision of food and water by mouth.

To act on SDM decisions, the original ACD or a certified copy must be sighted. Document this in the patient's case notes, place the certified copy in the Alert section of the medical record and scan into electronic records.

Impaired decision-making capacity

Impaired decision-making capacity means that the person is unable to:

- > understand the information given to them and the choices available to them (which must be presented to them in a way they should be able to understand including using an interpreter)
- > understand the consequences of having the health care or not having the health care
- > make a decision based on this information (or their own social, religious or moral grounds)
- > retain the information, even if for a short time
- > communicate the decision in some way eg verbally or with assistance.

Tools which can be used to assess decision-making capacity include the Darzins 6 step capacity assessment or refer to the Impaired Decision-Making Factsheet.

What do I do if it is not clear if the person has decision-making capacity?

Undertake a capacity assessment as set out in the Impaired Decision-Making Factsheet. If you are unsure, contact the ACD mentor in your health service to assist you. If there is a disagreement or you want further advice contact the Office of the Public Advocate who can make a declaration about the person's capacity.

What are binding provisions?

An ACD may contain binding provisions. A binding provision is a refusal of health care (including medical treatment and life-sustaining measures). To be binding the provisions must be relevant and applicable to the current circumstances as set out in the ACD.

Health practitioners must comply with a binding provision unless:

- > There is reasonable evidence that the person had changed their mind, for example they have refused blood transfusions under all circumstance as a Jehovah's Witness (JW), however they are no longer a JW, but didn't update their ACD.
- > It is an emergency **and** there is no time to consult the ACD/Substitute Decision-Maker or to work out the patient's condition to determine whether the provision applies.
- > They have a conscientious objection to complying with an ACD. If this is the case a health practitioner must hand over the care of the patient to another health practitioner in accordance with their professional Code of Conduct.

A refusal of health care means that you do not have consent to provide the health care. To provide health care without the person's consent can be grounds for unprofessional conduct or assault and battery.

Who must follow a binding provision in an ACD?

Health practitioners must comply with a binding provision in an ACD if there is no SDM appointed, or there is no time to contact a SDM if one is appointed.

If the ACD appoints a SDM, the SDM must follow the refusal in the ACD if they believe it is what the person would have done in the current circumstances. They must therefore refuse the health care on the patient's behalf. The SDM stands in the patient's shoes and their consent/refusal is legally valid as if it was the person making their own decision.

Can an ACD be used to demand specific health care be provided?

No. If a person has specified particular health care they would accept, this is an indication of their consent, and the treatment can be provided if it is considered clinically appropriate. However, there is no obligation on the health practitioner to provide the health care if it is not considered to be of benefit to the patient.

Protections for health practitioners

Health practitioners (and others complying with an ACD such as SDMs, social workers, aged care staff) are protected from criminal and civil liability for complying with an ACD in good faith and without negligence.

Where to get help, advice or to resolve disputes

If you have concerns about the decisions being made by a SDM or Person Responsible or there is a dispute about decisions, you can seek advice from ACD mentors in your service.

You can also contact the Office of the Public Advocate for advice or to mediate a dispute. As a last resort you can also apply to the Guardianship Board to hear and determine the dispute. In resolving all disputes, the wishes of the person who gave the ACD are of paramount importance, and not family members.

Contact the Office of the Public Advocate on 8342 8200 or country free call: 1800 066969.

For more information

SA Health
Policy and Commissioning Division
Email: policy&legislation@health.sa.gov.au
Subject line: Advance Care Directive

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