

# FREQUENTLY ASKED QUESTIONS

**SPEAK FOR  
YOURSELF.  
MAKE YOUR  
WISHES CLEAR.**

**PLAN  
AHEAD.**



## **Advance Care Directives**

### **1. Why should I complete an Advance Care Directive?**

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

- > Write down their wishes, preferences and instructions for future health care, living arrangements, personal matters and end of life
- > Appoint one or more substitute decision-makers to make these decisions on their behalf when they're unable to do so themselves.

It can give you peace of mind knowing that if others need to make decisions for you, your wishes will be carried out. It can also help relieve the burden on your family and friends if your wishes are known in advance.

### **2. I already have an Enduring Power of Guardianship, or Medical Power of Attorney or Anticipatory Direction, do I also need to complete an Advance Care Directive form?**

No. An Enduring Power of Guardianship, Medical Power of Attorney or Anticipatory Direction completed prior to 1 July 2014 is still effective. However, you should regularly review each of the documents you have completed to make sure they still reflect your current wishes and circumstances. The Advance Care Directive form is easy to complete and replaces the other three documents.

### **3. I am currently quite healthy, do I need to complete an Advance Care Directive form right now?**

Yes. It is best to complete an Advance Care Directive form when you are feeling healthy, when it is easier to set out your instructions and what is important to you, rather than doing so under the stress of ill health.

### **4. Do I have to see a lawyer to complete an Advance Care Directive form?**

No. You can complete your own Advance Care Directive form online at [www.advancecaredirectives.sa.gov.au](http://www.advancecaredirectives.sa.gov.au) at no cost to you. You can also download the Do-it-Yourself Kit (which includes the form) or the form for free from the website. You can also purchase a printed kit for \$5 from a Service SA customer service centre. The form and the Kit provide easy to follow guides on how to complete the form. If you wish, you can ask a lawyer to help you to complete an Advance Care Directive form, to witness it or to check what you have written.

## **5. What happens if my appointed Substitute Decision-Maker dies?**

If your appointed Substitute Decision-Maker dies and you still have decision-making capacity, you can complete another Advance Care Directive form to appoint another or other Substitute Decision-Makers.

If you no longer have decision-making capacity, the wishes and instructions recorded in the Advance Care Directive form will remain in place.

## **Wills and Enduring Powers of Attorney**

### **1. What is the difference between a Will and an Enduring Power of Attorney?**

Wills and Enduring Powers of Attorney are legal documents where a person can authorise someone they trust to manage their financial affairs.

The main difference between the two is that a Will outlines who you want your property and possessions (your 'estate') to go to after your death whereas, an Enduring Power of Attorney lets you appoint someone you trust to manage your financial affairs whilst you are still alive, and continues to operate if you become legally incapacitated and decisions need to be made on your behalf.

### **2. What decisions can an appointed person make on my behalf?**

The person you appoint can make any financial decisions, which you may have made yourself, on your behalf.

An appointed person cannot make any health, accommodation and lifestyle decisions on your behalf. When you have passed away the person you appointed cannot make any further financial decisions on your behalf.

### **3. Can an appointed person charge for their services?**

If the appointed person is a professional, for example a solicitor, an accountant, or a Trustee company, they are likely to charge for managing the financial affairs of the person who appointed them.

If the appointed person is a member of the family, or a friend, they cannot charge for their services as they take on the role for 'love and affection', unless an allowance has been specifically stated in the Enduring Power of Attorney document.

### **4. I have informed the person I have appointed how I want my estate to be distributed when I die, do I still have to make a Will?**

Yes, if you have an Enduring Power of Attorney you still need to have a Will. The person you appoint in your Enduring Power of Attorney ceases to have any authority over your financial affairs once you pass away. It is through a Will that you can leave instructions as to how your estate should be distributed when you die.

### **5. I do not want to spend the money to pay a solicitor to draft my Will, can I just complete a Will kit?**

Yes. However, making your own Will can lead to more difficulties for your family once you pass away. If it is not properly completed your family may have to go through the process of applying to the Supreme Court, to fix any errors after your death, which will incur cost. It would be sensible to invest the money to have your Will prepared properly to avoid any difficulties for your family later.

# Office of the Public Advocate

## **1. What happens if I don't have an Advance Care Directive in place and I am not able to make my own decisions?**

If you do not have an Advance Care Directive it may be unclear who you would want and trust to make decisions about your accommodation, health or other personal matters, if there is a time when you are not able to make these decisions yourself. Without an Advance Care Directive, family or close friends who could be asked to make decisions for you may not know your wishes.

Conflict can arise amongst relatives and friends about who is the most appropriate person to make these decisions and whether the decisions actually reflect your wishes, beliefs and values. This conflict can be avoided by making an Advance Care Directive and will make sure that you receive the right support, timely medical treatment and appropriate accommodation options.

## **2. What kind of disagreements can arise about an Advance Care Directive?**

If you have appointed more than one Substitute Decision-Maker, there may be disagreements about a decision that needs to be made for you. Sometimes, one Substitute Decision-Maker won't pass on relevant information about health or accommodation issues to the other. At other times they may stop relatives and friends from visiting you. Or a disagreement about a health matter may occur between the Substitute Decision-Maker/s and a health service.

## **3. Who can help my Substitute Decision-Makers, relatives or friends resolve a conflict about my health, accommodation or personal issues?**

The Office of the Public Advocate has a Dispute Resolution Service (OPA DRS) that can assist to resolve disagreements. The OPA DRS can offer initial assistance by providing advice and information about the Advance Care Directives Act as it applies to the person's situation. The OPA DRS has developed a mediation service where everyone involved in the dispute can come together to discuss the issues, with the help of an experienced and impartial mediator. The aim of this service is to reach an agreement that will respect the person's views and wishes.

## **4. How will my voice be heard during a conflict?**

The OPA Dispute Resolution Service is designed to support the rights of the person who made the Advance Care Directive and make sure that you are involved in the best way possible. Depending on your ability at the time, you may be directly involved in the mediation process, or indirectly involved and have an advocate or another person speak on your behalf.

## **5. What if there is a dispute about my decision-making capacity?**

In situations where there is conflict or doubt in relation to an Advance Care Directive, the Public Advocate can be asked to make a statement about your capacity to make a specific decision.

# Organ and Tissue Donation

## **1. I have ticked the box on my driver's licence that indicates my willingness to be an organ and tissue donor. Is that enough?**

Legally no. Indicating your willingness to be an organ and tissue donor on your driver's licence is a great first step – this is called an 'intent' and does link to the Australian Organ Donor Register. Your 'intent' may be used to guide your family regarding your decision, but is not a legal consent. 'Legal consent' is when you register your decision through the Australian Organ Donor Register. Registration, generally carried out after consideration of educational material, provides the opportunity to indicate which organs and/or tissues you would be willing to donate – or not donate.

## **2. Is it true that once I have consented to be an organ donor on the Australian Organ Donor Register, my family can override this decision should I ever meet the criteria to become an organ and tissue donor?**

Yes. Even if you have consented to be an organ and tissue donor your family can override this decision and so it is important to have a meaningful discussion with your family after making the decision and signing onto the register. If your family is clear about your decision they are more likely to uphold it.

## **3. I am 70, have diabetes and get angina every now and then. Can I still be an organ and tissue donor?**

Yes, you can still be an organ and tissue donor. Anyone who meets the rare and special criteria to be an organ and tissue donor is evaluated individually.

## **4. If I moved to Australia from the UK in 1985, can I be an organ and tissue donor?**

This is important information to know however it would not limit your ability to be an organ donor. If you spent more than 6 months in and around the UK from 1980 - 1996, the risk of Creutzfeldt-Jacob Disease (CJD) is recognised as a limiting factor for blood donation and tissue donation. However, individuals can still be considered for solid organ donation, e.g. heart, liver or kidney.

## **5. I have worn glasses for most of my adult life, can I still donate my eyes?**

Yes. Wearing glasses and poor eyesight is not a factor in deciding whether or not eyes are suitable for donation. The restrictions around eye donation are similar to those when donating blood. Even people who die of cancer can donate their eyes.

### **For more information**

Visit [www.sahealth.sa.gov.au/planahead](http://www.sahealth.sa.gov.au/planahead)

### **Free legal advice**

Contact the Legal Services Commission:

Phone: **1300 366 424**



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