

ADVANCE CARE DIRECTIVE

What is an Advance Care Directive?

It is a document that empowers you to make clear medical and lifestyle arrangements for your future. The document may specify your wishes as to medical treatment, accommodation, lifestyle and other personal matters in the event that you are unable to make these decisions for yourself, whether permanently or for a short time only. You may wish to appoint one or more Substitute Decision-Makers to make these decisions on your behalf. Alternatively, if you do not wish to appoint anyone, you may wish to simply write down your wishes, preferences and instructions.

The Advance Care Directive makes it easy for others to know what your wishes are and gives you peace of mind that your wishes will be respected when you are unable to make these types of decisions for yourself.

How does the new Advance Care Directive impact documents already in place?

If you have already completed an Enduring Power of Guardianship, a Medical Power of Attorney or an Anticipatory Direction, these will continue to be legally effective after 1 July 2014. If you wish to update your existing document(s) or create new documents after 1 July 2014, you must use the new Advance Care Directive.

Who can I appoint as my Substitute Decision-Maker?

Any adult person who is not involved in a professional or administrative capacity with your medical care or treatment. Your medical practitioner cannot be appointed but you can appoint your spouse or partner, your children or friends. A couple will frequently appoint each other first, and then appoint either children or a friend if they cannot make decisions for each other. You may also want, for example, to express your wishes regarding withdrawal of artificial life support measures if you are in a vegetative state or at the end stage of a terminal illness and there is no reasonable prospect of recovery.

If you have not appointed a Substitute Decision-Maker, someone who is close to you and is available and wants to make the decision will be contacted in the event that you are unable to make decisions for yourself. They must follow any relevant instructions you have written in your Advance Care Directive. This part of the new legislation is unclear as to whether preference will be given to any one person and who will contact those closest to you.

Does my Substitute Decision-Maker have to observe my wishes?

Yes, anyone making decisions for you will need to make the decisions they think you would have made in the same circumstances. However, no one can make decisions for you if you are able to make them yourself.

What is the difference between a Power of Attorney and an Advance Care Directive?

A person holding a Power of Attorney is authorised to make decisions in relation to your financial/business affairs only. A person making decisions under an Advance Care Directive cannot make financial decisions on your behalf.

Why should I make an Advance Care Directive?

There are several benefits:-

- it can avoid family disputes about medical care
- medical care is easier for hospital staff as the person appointed can consent to, or refuse, specific medical treatment.

Your spouse does not necessarily have the sole authority to make necessary decisions for you if there is any disagreement. All members of your family have equal say in decisions regarding your treatment unless you have an Advance Care Directive or have made a prior appointment of a guardian under an Enduring Power of Guardianship or Enduring Medical Power of Attorney.

If you do not have any of these documents and you become mentally incapable of making decisions about your lifestyle, accommodation or medical treatment, then an application may need to be made to SACAT by a person on your behalf. The necessary paperwork needs to be prepared and lodged with the Tribunal and then there is a hearing. A representative from the Public Advocate's office may be appointed to make decisions on your behalf. The delay, paperwork and uncertainty about who may be appointed can be avoided if you appoint a Substitute Decision-Maker/Attorney/Guardian.

How do I make an Advance Care Directive?

The document needs to be in an official form and witnessed to be legal. A solicitor familiar with estate planning and preparing wills will be able to assist.

For further information, please contact Sedsman Legal:

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