

Fact Sheet: Advanced Care Directives

What is an advance care directive?

The Advance Care Directive allows you to set out your clear directions about your future health care, end of life decisions, preferred living arrangements and other personal matters. The document allows you to not only write down your wishes, but to also appoint one or more Substitute Decision-Makers to make the decisions on your behalf if you are unable to do so in the future.

What happens if I become incapacitated and I don't have an Advance Care Directive?

Decisions about your care and living arrangements will be made by others without a legal framework or a clear indication of your personal wishes. This could mean you are kept on life support when you wish not to be. You could be placed into a nursing home away from family and friends. You may not receive the rehabilitation or other opportunities you would have preferred to receive. You may be sent to a facility or living arrangement which you would not have chosen.

Do I need a lawyer to prepare an ACD, or can I do it myself?

You do not need to hire a lawyer to draft an Advance Care Directive, but the document will require your signature along with that of a witness and the signatures of your Substitute Decision-Maker (s). We recommend you consult a lawyer to ensure your document is legally binding and that your wishes have been properly represented. The lawyer can also act as the independent witness to the document. A lawyer can assess your capacity to enter into an Advance Care Directive and ensure it is properly witnessed. They can also certify copies of the ACD to be provided to the Substituted Decision Makers and any health care providers.

Who can witness an Advance Care Directive?

This must be someone who is independent of you. They cannot be a beneficiary in your will, a Substitute Decision-Maker named in the document, or a paid professional carer. The witness must be listed as an authorised witness such as a registered professional, public servant with more than five years' service, lawyer, Justice of the Peace or Minister of Religion. A complete list of authorised witnesses can be accessed at <https://advancecaredirectives.sa.gov.au>.

Can a doctor override an advance care directive?

No. Health practitioners must comply with a binding provision in an Advance Care Directive if there is no Substitute Decision-Maker appointed, or no time to contact one. A Substitute Decision-Maker must also follow the Advance Care Directive instructions as they must stand in the person's shoes and make a decision as if they were the person referred to in the Advance Care Directive.

DEFINITIONS

The following are some common words used in relation to Advanced Care Directives.

Advanced Care Directive - a written legal declaration of your wishes in terms of health care, end of life, living arrangements and personal matters while you are still alive.

Substitute Decision-Maker - a person who you appoint to make decisions on your behalf if you are no longer in a position to make those decisions, or communicate those decisions.

Enduring Power of Guardianship - A legal document appointing someone to make personal and health care decisions on your behalf if you are unable to make or voice these conditions yourself.

Medical Power of Attorney - A legal document where you appoint someone to make medical treatment decisions for you when you are unable to make the decisions for yourself.

Anticipatory Direction - A legal document giving specific instructions about your medical care and end of life choices.

Disclaimer

Liability limited by a scheme approved under professional standards legislation. The content of this Fact Sheet is provided for general information purposes only and does not constitute legal advice. Please seek legal advice regarding your particular circumstances. While we have taken care to prepare this information, we do not accept liability to any person for the use of this Fact Sheet. The information contained in this Fact Sheet is provided on the basis that persons accessing this information will be responsible for assessing its relevance and accuracy.



Elise Thomson, Principal Lawyer

Will vs ACD

Some people don't understand that a Will and an Advance Care Directive are essentially two different things.

A Will deals with your life AFTER death and an Advance Care Directive deals with your wishes BEFORE death.

Essentially 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,
- end of life, living arrangements and personal matters
- and/or appoint one or more Substitute Decision-Makers to make these decisions on their behalf when they are unable to do so themselves while they are still alive.

A Will outlines what you intend for your assets and your children following your death.

An Advance Care Directive is sometimes referred to as a "living Will", but the two are very different documents.

Can a member of the family ignore an Advance Care Directive?

No. An Advance Care Directive is a legally binding document. If a family member is appointed as a Substitute Decision-Maker they must also follow the instructions in the Advance Care Directive. The exceptions are that the Substitute Decision-Maker cannot:

- Make a decision which would be illegal, such as requesting voluntary euthanasia.
- Refuse food and water to be given to them by mouth.
- Refuse medicine for pain or distress (for example palliative care).
- Make legal or financial decisions (unless you have also been appointed as an Enduring Power of Attorney for financial matters).

Who can be a Substitute Decision-Maker?

Generally speaking anyone can be appointed as a Substitute Decision-Maker, but you need to be sure that they will have the mental strength to be able to carry through your wishes. Those who CANNOT be appointed to the role include your doctor, nurse or paid professional carer. Family members and friends who are paid Carers' Allowance are able to be named as Substitute Decision-Makers.

Do I need an Advance Care Directive if I have Enduring Power of Guardianship, a Medical Power of Attorney or an Anticipatory Direction already?

No. These documents are still legally effective unless you complete an Advance Care Directive Form.

Do I need permission from my Substitute Decision-Maker to be included?

Yes. A Substitute Decision-Maker must certify, by completing and signing the relevant part of the advance care directive form, that he or she accepts the appointment and has read and understands the guidelines for substitute decision-makers.

How many substitute decision makers can you appoint?

You can appoint one or several Substitute Decision-Makers. You can then also outline whether they are to make decisions jointly or separately.

NEED MORE HELP?

At **Thomson & Associates** we offer a caring and understanding approach to our Will and Estate services. We know it can often be an emotional time, and that no-one wants to consider the prospect of dying.

You can book an appointment directly through:

Website: thomsonandassociates.com.au

Phone: (08) 7082 3728

Email: reception@thomsonandassociates.com.au

THOMSON
AND ASSOCIATES