

Advance Directives

Information about advance directives and applying to SACAT regarding an Advance Care Directive

What is an advance directive?

When a person is competent to understand what they are signing, and the nature and effect of the document, a person can arrange for legal documents to be prepared to set out their instructions, wishes and preferences for the future management of their finances and legal affairs, and their health, accommodation and personal affairs.

Trusted persons can be appointed under these documents as decision makers to manage these things for the person in the future (i.e. in **advance** of any impairment) and to make legal and personal decisions for them if they lose the ability to manage their affairs for themselves.

These legal documents are called *advance directives*. They need to be appropriately witnessed by an appropriate witness who is satisfied that the person is competent to sign them and has not been influenced by others to make the documents.

What is an enduring power of attorney? (financial and legal matters)

An advance directive about the appointment of an attorney (“the donee”) to manage a person’s legal affairs, and to make financial decisions when a person no longer has capacity to do so, is called an *enduring power of attorney* (EPA).

What is an advance care directive? (personal and health decisions)

An advance directive about the appointment of a person (a substitute decision-maker) to make personal and health decisions and to set out health directives for end-of-life care is called an *advance care directive* (ACD). There is now a special form for recording the provisions of an advance care directive.

However, under the law, older documents (made before 1 July 2015) called an *Enduring Power of Guardianship*, a *Medical Power of Attorney* and an *Advance Medical Directive* are also recognised as advance care directives.

An ACD enables adults to make arrangements in advance for their future wishes and instructions about most types of health care, lawful treatment decisions in the terminal phases of illness, accommodation, and personal matters. They can also be used to appoint one or more *substitute decision-makers* (SDMs) (also called *enduring guardians* or *medical attorneys* under the older documents) to make decisions on the person’s behalf when they are unable to do so due to impaired decision-making capacity.

Types of applications SACAT deals with

- ✓ Cancelling or changing an advance care directive when a person is no longer competent to do this themselves but expresses a clear wish to change the document
- ✓ Reviewing an ACD to replace a substitute decision-maker and/or revoke an ACD because:
 - The SDM is ineligible to be appointed or remain appointed (they may have lost capacity themselves) or
 - The SDM is no longer willing to act in that role and there is no other SDM appointed or
 - The SDM is in default in the exercise of their powers as an SDM and they are found to be no longer fit to continue in that role or
 - The SDM has been negligent in the exercise of their duties or

- There has been a 'change in circumstances' of the person or the SDM (only the Public Advocate may apply in this situation). A change in circumstances may include:
 - The SDM cannot be located
 - There has been a breakdown of relationship between the SDM and the person
 - There has been a change of the health status of the SDM or of the person
- ✓ Reviewing a matter dealt with by the Public Advocate in resolving a dispute in relation to an ACD
- ✓ Making declarations and directions about the meaning of health directives, whether the directives have been 'activated' or about disputes that might arise under an ACD (this will usually only be done if the Public Advocate has previously tried to resolve the matter or tried to mediate the issue)
- ✓ Making declarations about whether the ACD is valid (i.e. whether the person was competent and acting of their own free will to make the ACD at the time)

What matters SACAT cannot resolve

SACAT does not have the power to set aside an EPA but it can appoint an administrator who can do this if the EPA arrangements are not working, and it is necessary to make an order to protect the person's finances.

SACAT does not provide initial advice or dispute resolution or give initial directions or declarations about issues arising under ACDs (unless the Public Advocate refers this to SACAT, or a person wants SACAT to hear a matter).

Dispute resolution about issues arising under ACDs is preferably done by the Public Advocate. If necessary, the Public Advocate will refer a dispute to SACAT if they cannot resolve it.

Applying to SACAT

All applications to SACAT are completed through our online application form which you can find at our website: www.sacat.sa.gov.au.

All the information you are required to provide will be contained in the online application form.

If you are unable to complete the form online, you can contact the Tribunal for assistance on 1800 723 767. You can also visit SACAT's offices at Level 4 or 7, 100 Pirie Street, and use a computer at one of SACAT's public kiosks.

What fees apply to an application to SACAT regarding an ACD?

There are no fees payable for applications about advance care directives.

Further information

For further information and assistance about when it is appropriate to apply to SACAT regarding an ACD please contact the Office of the Public Advocate on 1800 066 969 (toll-free), or visit their website, [Office of the Public Advocate](http://www.sacat.sa.gov.au).

Contact the Tribunal

For further information and assistance about applying to SACAT about an advance care directive, please telephone SACAT on 1800 723 767 (select option 4 and then option 2)

This information sheet does not constitute legal advice and does not relate to the circumstances of any individual matter. If you wish to have legal advice you should seek that independently.