



Advance Directives

Advance CARE Directives (personal and health)

Enduring Power of Attorney (financial and legal)

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 authorised witness who is satisfied that the person is competent to sign them and has not been influenced by others to make the documents.

Financial matters – Enduring Power of Attorney

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

Personal and Health decisions – Advance Care Directive

An advance directive about the appointment of a person (a substitute decision-maker) to make personal decisions 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 (ACD) 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 (SDM) and/or revoke an ACD because:
 - The SDM is ineligible to be appointed or remain appointed (they may have lost competence 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 a substitute decision maker (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 of circumstances’ of the person or the SDM (only the Public Advocate can apply in this situation). By example a ‘change of circumstances’ may include: that the SDM cannot be located, there has been a breakdown of the relationship between the SDM and the person, or a change in the health status of the SDM, or of the person, which leads to difficulties in the SDM remaining in that role.
- ▶ Reviewing a matter dealt with by the Public Advocate to resolve disputes arising under an ACD.
- ▶ Making declarations and directions about the meaning of health directives, whether the directives have been ‘activated’ and 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 SACAT does not do

SACAT does not have the power to set aside an Enduring Power of Attorney but it can appoint an administrator who can do this if the EPA arrangement is 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.

To make an application

All applications to SACAT must be made through the SACAT website: www.sacat.sa.gov.au

Further information

For 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 8342 8200.

SACAT does not guarantee the accuracy or completeness of this Fact Sheet and does not accept any responsibility if you rely on it. You should always seek your own legal advice.