

Advance care planning and the law: South Australia

This factsheet gives specific information about advance care planning and South Australian (SA) law.

Advance care planning statutory documentation

An **Advance Care Directive** is the formal document recognised by law. It comes into effect if a person loses capacity (cannot make or communicate their decisions). The directive allows the biding refusal or withdrawal of medical treatment and non-binding consent to commencement of future treatments.

Formal requirements for advance care planning documents

It is mandatory to use the prescribed form for the advance care directive to be recognised. The form must be signed by a suitable witness, i.e. a person who is a competent adult and is a person or is in a class of persons included in the list of suitable witnesses. A minor irregularity will not affect the validity of the advance care directive, but a more substantive irregularity will affect the validity.

Amending or revoking advance care planning documents

A person who wants to amend or revoke their plan will need to prepare a new Advance Care Directive to revoke the existing plan.

Non-statutory advance care planning documents

South Australia allows for informal advance care planning documentation within the advance care directive with general statements about preferences and values.

Health care professionals' obligations

A health care professional must comply with any binding provision in an advance care directive, which is any direction for the refusal of health care. Non-binding directions about consent to treatment should be complied with insofar as is reasonably practicable.

Advance care planning in context of mental health

The Advance Care Directive can include preferences relating to mental health treatment.

Substitute decision-maker

A substitute decision-maker may be nominated by the person, appointed by a tribunal or by default under legislation.

Substitute Decision-maker

One or more adults can be appointed into this role by completing the Advance Care Directive. A health practitioner who is responsible for the health care of the person or a paid carer of the person cannot be appointed. The substitute decision-maker must accept the appointment in writing on the Advance Care Directive. The substitute decision-maker can make decisions relating to refusal / withdrawal of treatment as well as consent for procedures. They cannot refuse administration of drugs to relieve pain or suffering or the natural provision of food or fluid by mouth.

Guardian

A guardian is a person appointed by the South Australia Civil and Administrative Tribunal (SACAT). A guardianship order may be full or limited.

Person responsible

Default substitute decision-maker, the person designated under the law if no guardian or attorney appointed.

1. Relative (spouse, partner, relative) with close and continuing relationship
2. Adult friend with close and continuing relationship
3. Adult who oversees day to day supervision, care and well-being
4. A person appointed by the SACAT



Does the advance care directive apply in other states?

An Advance Care Directive made in South Australia will apply in:

- Northern Territory, however the substitute decision-maker needs to work within the requirements of Northern Territory
- Queensland, if it aligns with the provisions included in the Queensland Advance Health Directive
- Western Australia, if an order is made by the State Administrative Tribunal to recognise the plan
- Victoria from 12 March 2018, if it complies with South Australian and Victorian law it will be recognised as a values directive

In the Australian Capital Territory, New South Wales and Tasmania there is no law in place to recognise advance care planning documentation from other states. Further advice should be obtained from the Office of the Public Advocate in the relevant state or territory.

Where can I get more information?

Advance Care Planning Australia:

advancecareplanning.org.au

National Advisory Service: 1300 208 582