

# Understanding Substitute Decision-Making (South Australia)



# Your right to make your own decisions

At Opal HealthCare, we recognise the importance of encouraging older Australians to be as physically, socially, and emotionally autonomous as possible.

That's why we safeguard and support your right to make decisions about your care and services. If you lack the capacity to make certain decisions in your own best interest, it's important you have the right support, and a substitute decision-maker to make decisions on your behalf.

This resource will support you or someone you care about, to appoint a substitute decision-maker.

It's intended for general information only and doesn't constitute legal or financial advice. We recommend you consider your personal circumstances and seek professional advice, if needed.





## What does it mean to have capacity? It means you can...

- Understand the nature and effect of your decisions about the matter.
- Freely and voluntarily make decisions about the matter.
- Communicate your decision in a way that can be understood.

## Registered Supporters

You may wish to consider appointing and registering a trusted family member or friend as a 'Supporter' to help you to make decisions.

The Supporter's role is to help you understand options, access information and communicate your decisions if you would like them to, but unlike substitute decision-makers, **they can't make decisions on your behalf.**

Supporters can only act with your consent and always in your best interest. Supporters do not replace authorised decision-makers. Supporters must be registered with My Aged Care.

## Guiding Principles

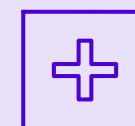
- The presumption is that you have capacity to make your own decisions and that substitute decision-making is a last resort.
- Your age, disabilities, appearance or behaviour are not indicators of whether or not you can make your own decisions.
- A substitute decision-maker may make decisions about the matters for which they were appointed but not others.
- Medical practitioners provide advice and support in assessing capacity, but they do not make decisions.
- Substitute decision-makers must always act in your best interest and take into account your views and wishes, be these expressed verbally, in writing or via any other way of communication.

# What type of decision needs to be made and who can make them?



## Legal and Financial decisions

An **Enduring Power of Attorney** is a legal document to appoint an **Attorney** (or attorneys) to make legal and financial decisions on your behalf.



## Health, Accommodation & Lifestyle

An **Advance Care Directive** or **ACD** is a legal document that states your wishes, preferences and instructions for your future health care, end of life care, living arrangements and personal matters. It should also identify those you authorise to make health and lifestyle decisions for you.



## Medical treatment decisions

If you cannot consent to medical treatment, a health professional will follow instructions detailed in your Advance Care Directive. If you have not appointed a substitute decision maker and a medical decision needs to be made, a **Person Responsible** (someone close to you) may be able to make some medical treatment decisions on your behalf.



## A closer look at legal and financial decisions

### Enduring Power of Attorney (EPA)

An Enduring Power of Attorney (EPA) is a **legal document** that appoints a trusted person (an attorney) to make **legal** and **financial decisions** on your behalf should you lose capacity to make these types of decisions for yourself.

### Who can be an attorney under an EPA?



A trusted person (or persons) legally appointed by you.

#### OR

A person (or persons) appointed for you by a court or tribunal.



A family member, next of kin, health professional or representative under the Aged Care Act **cannot** act as your EPA unless they have been legally appointed by you with an authorising document or by a tribunal.

### Appointing an attorney yourself

If you have capacity to do so, you can appoint anyone you choose over the age of 18 years to assist you with legal and financial decisions.

- An EPA can be a **relative or friend** and doesn't need to be a solicitor or professional.
- You can appoint **multiple people** to the same role.
- You can appoint **alternative attorneys** to step in if your preferred attorney is unable to carry out their responsibilities for any reason.

### What can your EPA do?



- Make decisions about your banking, money, and financial arrangements
- Make decisions about legal matters
- Make decisions about property



- Make decisions about your health, accommodation or personal affairs
- Make changes to your will

## Next steps

1. Select a person (or persons) to act as your attorney. You must select a person while you still have capacity to make your own decisions.
  - Contacting a private solicitor to assist you to formalise your EPA arrangements
2. Discuss your wishes and request with the person or people you wish to appoint.
3. Formalise the arrangement by:
  - Purchasing and completing an Enduring Power of Attorney kit from [sa.gov.au/topics/family-and-community/planning-ahead](https://sa.gov.au/topics/family-and-community/planning-ahead)
  - Calling SA Gov on **13 10 84**
  - Calling the Public Advocate on **1800 066 969**
4. Store your document securely and ensure that your Care Community has a copy.
5. Remember that the Power of Attorney only takes effect when you decide or when you lose capacity to make legal and financial decisions for yourself.



## What happens if you lose capacity before you have appointed an Enduring Power of Attorney?

If you have lost capacity and have **not** appointed an EPA, a trusted person can apply to **South Australia Civil and Administration Tribunal (SACAT)** to appoint a person to manage your legal and financial affairs.

### What orders can SACAT make?



#### Appoint an administrator to manage your legal and financial affairs.

SACAT may appoint a family member, friend or trusted professional who is willing and able to take on the role of administrator and manage your legal and financial affairs.

OR



#### Appoint a Public Trustee to manage your legal and financial affairs.

If no family or trusted person is willing or able to take on the role of administrator, then the Public Trustee may be appointed to manage all, or part, of your legal and financial affairs.

OR



**Decide that you still have capacity** and can either appoint your own EPA or make legal and financial decisions for yourself.



## A closer look at health, accommodation and lifestyle decisions



### Advance Care Directive (ACD)

#### What is an Advance Care Directive?

An Advance Care Directive is a legal form that allows you to write down and formalise your wishes, preferences and instructions for future health care, end of life, living arrangements and personal matters.

In the document, you can appoint one or more substitute decision-makers to make health and lifestyle decisions on your behalf should you be unable to make these decisions for yourself. You can specify the types of decisions you want them to make along with other conditions and specifics.

You can change your ACD at any time while you are still able by completing a new form and your new ACD will replace all other documents you may have completed in the past.

#### What is a Person Responsible?

If you have not appointed a substitute decision-maker to make medical treatment decisions for you, then a health practitioner may seek medical consent from a **Person Responsible**. A Person Responsible is an adult who is close to you and who has had a long and continuing relationship with you, such as a spouse, partner, or close friend. There may be several people who meet the criteria of 'Person Responsible' so the health practitioner will generally seek consent from the closest person to you and work through the list on a hierarchical basis.

If the South Australia Civil and Administration Tribunal (SACAT) has appointed a guardian for you, then the guardian will be consulted first.

A Person Responsible can make decisions about care, services, procedures, end of life treatment or refuse to give consent to medical treatment. They should try to make the decision that you would have made for yourself.

## Next steps

1. Consider your wishes for your future including health care, end of life care and accommodation and personal matters (the more details you include, the better equipped your substitute decision-maker will be to make decisions on your behalf).
2. Discuss your wishes and request with the person or persons you hope to appoint as a substitute decision-maker.
3. Consider whether you should seek advice from a health care provider, social worker or from a legal advisor or Advance Care Planning Australia.
4. Complete the official Advance Care Directive form by:
  - Contacting Services SA **service.sa.gov.au** or **call 13 23 24**
  - Calling the Legal Services Commission on **1300 366 424**
  - Downloading and completing the form at **advancecaredirectives.sa.gov.au**
5. Store your document securely and provide your Care Community, substitute decision-maker and doctor with a certified copy (there is no ACD register).
6. Remember that the ACD only takes effect when you decide or when you lose capacity to health and personal decisions for yourself.



## What happens if you lose capacity before you have completed an Advance Care Directive?

If you have lost capacity and have **not** completed an Advance Care Directive and appointed a substitute decision-maker, a trusted person may apply to **South Australian Civil and Administration Tribunal (SACAT)** to appoint a person to manage your health, accommodation and lifestyle matters.

## What orders can SACAT make?



### Appoint a private guardian

SACAT may appoint a family member, friend or trusted professional to manage your health and lifestyle affairs if one is available.

OR



### Appoint a public guardian

If **no** family member or friend is willing or able to take on the role of Guardian, then a **public guardian** may be appointed to manage all or part of your health and lifestyle affairs.

OR



**SACAT may decide that you still have capacity** to complete an Advance Care Directive or make health and lifestyle decisions for yourself.



## Contacts

### **Office of the Public Advocate**

Phone: 8342 8200

Email: [opa@agd.sa.gov.au](mailto:opa@agd.sa.gov.au)

Website: [opa.sa.gov.au](http://opa.sa.gov.au)

### **Services South Australia**

Phone: 13 10 84

Website: [service.sa.gov.au](http://service.sa.gov.au)

### **South Australia Civil and Administrative Tribunal (SACAT)**

Phone: 1800 723 767

Website: [sacat.sa.gov.au](http://sacat.sa.gov.au)

### **Older Persons Advocacy Network (OPAN)**

Phone: 1800 700 600

Website: [opan.org.au](http://opan.org.au)

### **Aged Care Quality and Safety Commission**

Phone: 1800 951 822

Email: [info@agedcarequality.gov.au](mailto:info@agedcarequality.gov.au)

Website: [agedcarequality.gov.au](http://agedcarequality.gov.au)

### **National Accreditation Authority for Translators and Interpreters**

Phone: 1300 557 470

Email: [info@naati.com.au](mailto:info@naati.com.au)

Website: [naati.com.au](http://naati.com.au)

## Resources

For a comprehensive range of resources to help you navigate substitute decision-making, please visit:

**[opalhealthcare.com.au/welcome/substitute-decision-making](http://opalhealthcare.com.au/welcome/substitute-decision-making)**

