

Article Information

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Advance Care Directives: How the changes impact you

On 1 March 2024, the *Advance Care Directives (Review) Amendment Act 2023 (Act) (SA)* came into operation introducing a number of amendments to the *Advance Care Directives Act 2013 (SA)*. ACDs allow decisions to be made in respect of a person's future medical decisions, treatment and health care, residential and accommodation arrangements, living and personal care matters and refusal of health care decisions.

Of particular importance, was that a new form of Advance Care Directive (**ACD**) was published by the Minister for Health and Wellbeing with effect from the same date. In simplistic terms, this means that any ACD accepted and signed in full prior to 1 March 2024 will remain legally valid but any incomplete documents must now be in prepared in accordance with the new form. Notwithstanding the overhaul in appearance compared to its predecessor, the new form also allows the person giving the directive (donor) to:

- Substitute Decision-Maker (**SDM**) (person who carries out the wishes of the donor) who is:
 - reasonably available, willing and able to make decisions on the donor's behalf; and
 - responsible for contacting the other SDMs when decisions need to be made;
- list those people he/she wishes to be involved in personal health care discussions;
- delineate the things important to him/her if nearing death; and
- subscribe to becoming an organ and tissue donor.

SDMs continue to only be authorised to make decisions on behalf of a donor in the event that a donor has an impaired decision making capacity, either temporarily or permanently. Impaired decision making capacity in respect of a decision is determined when an individual is not capable of:

- understanding any information that may be relevant to the decision; or
- retaining that information; or
- using that information to make the decision; or
- communicating the decision in any manner.

Whilst the Act still mandates SDMs to sign the form prior to the donor, SDMs are now able to sign the form electronically. This reformation should provide much relief to those SDMs residing interstate and overseas, however, a donor must continue to sign the ACD by wet signature.

Another amendment of note, are the definitive and express provisions in the Act stating that any directions in the form pertaining to suicide or self-harm are not legally binding and do not have to be followed by any health care practitioner despite the wishes of the donor.

Our Private Client Services Team is available to discuss these changes with you or your clients. We welcome you to contact us should you require assistance in preparing the new forms.