

Article Information

Team: Piper Alderman

Service: Estate & Succession Planning

Sector: Private Clients

South Australian Legislative Update - Advance Care Directives

As of 1 July 2014, the provisions of the Advance Care Directives Act 2013 (SA) (ACD Act) come into operation.

As of 1 July 2014, the provisions of the Advance Care Directives Act 2013 (SA) (ACD Act) come into operation.

The ACD Act greatly impacts how an individual's medical, health care and lifestyle decisions can be made if they are unable to make those decisions by establishing one document now called an Advance Care Directive (ACD).

An ACD replaces:

- Medical Powers of Attorney and Anticipatory Directions governed by the *Consent to Medical Treatment and Palliative Care Act 1995*
- Enduring Guardians governed by the *Guardianship and Administration Act 1993*.

Whilst Medical Powers of Attorney, Anticipatory Directions and Enduring Guardians executed prior to 1 July 2014 will still be legally effective any amendments or updates to these existing documents must be in the form of the new ACD.

The ACD will have effect when an individual's decision-making capabilities are impaired. Impaired decision-making capacity is defined in the ACD Act to include when a person "is not capable of understanding any information that may be relevant to the decision" or is not capable of "communicating his or her decision in any manner".

The ACD will allow individuals to record their personal wishes and instructions as to their:

- future medical decisions, treatment and health care
- residential and accommodation arrangements
- living and personal care matters
- end of life decisions.

Individuals can appoint a "substitute decision-maker" in the ACD to make medical, health care and lifestyle decisions on their behalf.

A substitute decision-maker is not permitted to make financial, legal or business decisions, and the ACD Act does not amend the *Powers of Attorney and Agency Act 1984* (SA). Therefore the ACD Act does not impact on Enduring Powers of Attorney.

Other features of the ACD Act include:

- the ACD must be completed on the official ACD form
- obligations on the witness to the ACD to ensure that the individual making the ACD:
 - has been provided with and understands the ACD statement; and
 - understood the ACD and is not acting under any duress or coercion.
- increased protection and safeguards for health practitioners and substitute decision-makers who give effect to an ACD
- a more simplistic resolution process in cases of uncertainty or disputes regarding an ACD and a person's health and medical decisions.

If you are unsure whether your current documents require updating or if you would like further information or advice about preparing an ACD Piper Alderman can provide you with the appropriate advice for your specific needs.