



## Power of Attorney and Advanced Care Directives

Advance Care Directives cover what have previously been known as Enduring Powers of Attorney and Enduring Power of Guardianship.

In South Australia there are four kinds of Advance Care Directives. Each covers a specific area of decision making.

They are:

- Enduring Power of Attorney. (Financial Decisions)
- Enduring Power of Guardianship. (Lifestyle and Medical).
- Medical Power of Attorney. (Medical decisions only).
- Anticipatory Direction (Your preferences of medical treatment).

At Scammell & Co. we have lawyers who can advise you and prepare documents that reflect your specific needs.

### **What power is given by an Enduring Power of Attorney?**

It gives the person, or people you choose, the power to manage your money, your assets, your finances and your legal affairs. The appointed Attorney can, for example, deal with Centrelink, lodge your tax returns, operate your bank accounts, pay your bills, sell your house, invest your money and use your money for your benefit.

The document can be made so that it only comes into effect if you ever become unable to manage your affairs, or it can commence immediately and endure if you lose mental capacity. An Attorney, with the Power of Attorney document, cannot decide where you live or make decisions regarding your welfare or medical treatment.

### **Why make an Enduring Power of Attorney?**

Unexpected sickness or an accident can render a person unable to make decisions in either the short term or long term. This can cause major difficulties for families if you have not prepared an Enduring Power of Attorney.

### **What is a Medical Power of Attorney?**

This document allows the appointment of someone to make decisions about your medical care and treatment. A Medical Power of Attorney cannot make any lifestyle or financial decisions and cannot decide where you can live.

### **What is an Enduring Power of Guardianship?**

This document gives the person of your choice the legal authority to make your lifestyle and medical treatment decisions. It also allows you to record your personal wishes in relation to lifestyle decisions and medical treatment if you ever become unable to make decisions on these matters.



### **Why make an Enduring Power of Guardianship?**

In some cases family members can make lifestyle and medical decisions for you informally. However, some decisions cannot be made informally. Without a Power of Guardianship an application must be made to the Guardianship Board for a Guardianship Order.

A Power of Guardianship gives a person, or people you choose, the authority to decide where you live and to make your personal, social and welfare decisions if ever you are unable to.

A Guardian also makes decisions about medical care and treatment if you do not have a Medical Power of Attorney. In the document you can give your Guardian specific conditions, directions and requests to follow when making decisions on your behalf.

### **What is an Anticipatory Direction?**

This document provides a way of legally recording a person's wishes and directions about end of life decisions and will only apply if you are in the final stage of a terminal illness or in a persistent vegetative state.

It does not appoint another person to make your decisions.

### **Why make an Anticipatory Direction?**

An Anticipatory Direction allows you to stipulate the kind of medical treatment you want, or do not want, if you are ever unable to make or convey your wishes. The Direction must be followed by those responsible for your medical care. It can be used as a stand-alone document or accompany the Medical Power of Attorney or Enduring Power of Guardianship.

### **Are all Powers of Attorney enduring?**

No. There may be a time when it is necessary to appoint someone to manage your financial affairs while you still have the capacity to appoint that person. This may be due to an immediate short-term need, such as an extended overseas trip. A Power of Attorney that is not an Enduring Power of Attorney appoints someone you trust to manage your financial and legal affairs for a limited time or for a special condition.

You can make a Power of Attorney that comes into effect immediately and that will also endure if you lose capacity.



### **What is an Advance Directive?**

An Advance Directive is a legally binding document that expresses a person's wishes or directions in advance in the event that mental capacity is lost in the future. Only people over 18 years of age can make Advance Directives.

For an Advance Directive to be legally valid, the person making it must have the mental capacity to understand its nature and effect and the consequences of completing and signing the document. This must be done without any coercion, pressure, or influence by others.

### **Why should I make an Advance Directive?**

An illness or accident can throw our lives and the lives of our loved ones into disarray.

Making an Advance Directive is a way of planning ahead and ensuring that your wishes are followed and that someone, who you know and trust, can legally look after your financial, health and personal affairs, if you are ever unable to do so.

### **What happens when there are no Advance Directives?**

If you lose your capacity to make decisions and have not made an Advance Directive then no one has the legal authority to manage your affairs and make decisions for you.

The Guardianship Board can decide who will make your medical, personal and social decisions and decide where you live. Sometimes the Public Advocate is appointed as your Legal Guardian instead of a family member.

Your family will not be able to make your financial or legal decisions. An application to the Guardianship Board for an Administration Order will be necessary. The Public Trustee may be appointed as your Administrator to manage your assets, and financial and legal matters. This includes assets that you own jointly.

### **Contact Us Today**

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