

Consent to Medical Treatment and Palliative Care Act 1995

What is this Act?

This is a law, passed in South Australia in 1995, which means that:

- You are entitled to have your medical condition and treatment options explained to you by your doctor.
- You can refuse medical treatment if you don't want it.
- You can appoint another person to act on your behalf when you are unable to make medical decisions. This person is called your *Medical Agent*. You may appoint this person under a Medical Power of Attorney document.
- You are able to fill out a form which details the medical treatment you want or don't want, in case you are unable to make those decisions at some time in the future.

Who can act on your behalf?

Someone close to you is usually chosen - for instance, a partner, a child or a good friend - who must be at least 18 years. You can have any number of *Medical Agents*, but only one can act for you at a time.

The person chosen should not be involved, in any professional capacity, in the delivery of your medical care. For example, any health professional who is being paid to look after you cannot be your *Medical Agent*.

Medical Agents can say 'yes' or 'no' to treatment, but cannot:

- refuse food or water to be given to you by mouth;
- refuse drugs that would ease pain or distress;
- refuse treatment that would make you well enough to make your own decisions (unless you have a terminal illness and there is no real chance of recovery).

Who can appoint a *Medical Agent* or complete an *Anticipatory Direction*?

- Anyone who is 18 years or older; and
- anyone who is competent to make decisions about their own affairs by themselves.

When someone is needed to make medical decisions on behalf of a person who is **not** competent, contact the Office of the Public Advocate for further information.

How do you organise a *Medical Agent*?

You need to fill out a *Medical Power of Attorney* form that passes legal power to your *Medical Agent*. Your doctor may be able to supply a copy of the form. If not, you can get a form from the organisations listed on the back of this pamphlet.

Remember to discuss with your *Medical Agent* any special conditions that you have set out in writing and wish them to follow.

Can you write down your wishes rather than have a *Medical Agent*?

Yes. In this case you will need to fill out an *Anticipatory Direction* form. It is available from the organisations listed on the back of this pamphlet.

You can write down treatments that you do or do not want in case at some later time you are incapable of making decisions about your medical treatment and you are:

- in the last phase of a terminal illness (when you have an illness or a condition that is likely to result in death and there is no real chance of recovery); or
- in a persistent vegetative state (in most cases this is when there is permanent severe brain damage but you are still breathing).

You should consider discussing your wishes with the people closest to you. In addition, it may be helpful to discuss this with your doctor and your *Medical Agent/s* if you have appointed any. All these people should know that such a direction has been made, so that it is respected in a time of serious illness.

Both of these forms must be signed by an **authorised witness**. An **authorised witness** means either a justice of the peace; a commissioner for taking affidavits in the Supreme Court; a member of the clergy; a registered pharmacist; or a manager of an authorised deposit-taking institution or police officer appointed under the *Oaths Act 1936* to take statutory declarations.

Can I have both a *Medical Agent* and an *Anticipatory Direction*?

Yes. If you have both, the *Medical Agent* must comply with any directions that you have written down.

What if you change your mind?

If you have appointed a *Medical Agent* or completed an *Anticipatory Direction*, you can change or cancel the documents at any time (but you must be legally considered to be capable of making decisions for yourself). You should date and sign each copy of the forms if you change any of your wishes and destroy any copies if you cancel them. You should get your *Medical Agent/s* to sign and date any alterations you make to your Medical Power of Attorney document.

Can any one else change or cancel my wishes?

No. But an officer of the Supreme Court can review decisions your *Medical Agent* makes in special circumstances.

How will medical staff know if you have a *Medical Agent* or have made an *Anticipatory Direction*?

You need to keep the original form/s in a safe place. You can choose to register with Medic Alert which allows you to record the names of your *Medical Agents* and any *Anticipatory Directions*. You should also keep copies in your wallet or purse and give copies to your doctor and to family members close to you.

Do I need a lawyer to fill out these forms?

No. Both forms come with instruction sheets and phone numbers of people to contact for help so that you can easily fill out the forms by yourself. However, in some circumstances (eg when your family situation is complicated), you may wish to discuss this with your lawyer.

In addition to the *Consent to Medical Treatment and Palliative Care Act*, there is another Act covering similar aspects of your life. It is called the *Guardianship and Administration Act 1993*.

Enduring Power of Guardianship

You can exercise this power under the *Guardianship and Administration Act*. It allows you to appoint an *Enduring Guardian* to make important health and lifestyle decisions when you are legally considered unable to do so for yourself. An *Enduring Guardian* can potentially make a wider range of decisions than a *Medical Agent*. An *Enduring Guardian* can only make decisions once you are legally considered to be unable to make decisions for yourself.

Contact the [Office of the Public Advocate](#) for more information.

Good Palliative Care Plan

Medical Powers of Attorney, Anticipatory Directions and Enduring Powers of Guardianship, which are together called *advance directives*, can only be signed by a competent person (one who is legally capable of making their own decisions).

Some residents in aged care facilities are not competent and have not previously organised an advance directive. To assist staff in nursing homes to know if a resident should be actively or passively treated, the Department of Health has endorsed the use of *Good Palliative Care Plans* for people in the terminal stage of terminal illness. Although not a legal document, it is a record of a discussion between the patient, family and the doctor about palliative care or active treatment. The Good Palliative Care Plan is written by a doctor in consultation with legally appointed agents and/or family members.

Contact the [Palliative Care Council](#) for more information.

Where to get the forms

You, your doctor or other people that you discuss these matters with, can obtain copies of the *Consent to Medical Treatment and Palliative Care Act* and the Medical Power of Attorney or Anticipatory Direction forms from:

Service SA

Tel 13 23 24

www.service.sa.gov.au

Department of Health

CitiCentre Building, 11 Hindmarsh Square
Adelaide

www.health.sa.gov.au/consent

Further information and advice on completing the forms:

Office of the Public Advocate

ABC Building

85 North East Road Collinswood

Tel (08) 8269 7575

Toll Free 1800 066 969

Fax (08) 8269 7490

Email opasa@opa.sa.gov.au

www.opa.sa.gov.au

The Palliative Care Council of South Australia

202 Greenhill Road Eastwood

Tel (08) 8291 4137

www.pallcare.asn.au

Registration of Medical Agents and Anticipatory Directions:

Australian Medic Alert Foundation

216 Greenhill Road

EASTWOOD SA 5063

Tel (08) 8274 0361

Toll Free 1800 882 222

This explanation does not cover all aspects of the *Consent to Medical Treatment and Palliative Care Act 1995*. It should be used as an information guide only.

An explanation of a

Medical Power of Attorney and An Anticipatory Direction

The Consent to Medical Treatment and Palliative Care Act is about choosing the medical treatment you wish to have or refuse when you are unable to make your wishes known because of your illness.



Department
of Health