

A substituted decision maker makes decisions on your behalf when you are not able to make those decisions yourself. A substituted decision maker can be appointed to make all decisions you could make yourself or only those decisions that you confine them to.

Such a decision maker has the same legal authority as the person who gave the authority and can make all the lawful decisions that you could have made yourself if you have full decision-making capacity. Having said that, substitute decision-makers cannot refuse pain relief or the natural provision of food and water by mouth.

To act on such a decision, the original Advance Care Directive or a certified copy must be sighted.

We at Steven M Clark Pty Ltd will forward to the hospital nearest to where you reside and to your nominated medical attendant at primary health care level a copy of your Advance Care Directive in order for access to that document to be readily gained in the event of need.

Binding Provisions

An Advance Care Directive may contain binding provisions such as a refusal of health care (including medical treatment and life-sustaining measures).

To be binding, the provisions must be relevant and applicable to the current circumstances as set out in the Advance Care Directive.

Health practitioners must comply with the binding provision in an Advance Care Directive if there is no substituted decision maker appointed or if there is no time to contact a substitute decision maker if one is appointed.

If the Advance Care Directive appoints a substitute decision maker, the substitute decision maker must follow a "refusal" stipulated in the Advance Care Directive if he or she believes that it is what the Donor would have done in the current circumstances. He or she must therefore refuse the Healthcare on the Donor's behalf. In this way, the substituted decision maker stands in the Donor's shoes and his or her consent/refusal is as legally valid as if that was the refusal of the Donor making his or her own decision in that respect.

We look forward to being of assistance.

**Please ask our friendly staff should you
require any further information**



Steven M Clark Pty Ltd

Mr Steven M Clark

Adelaide Road Chambers

1 Adelaide Road, Gawler South SA 5118

Phone 08 8522 6025 Fax 08 8522 4544

Email law@stevenmclark.com.au

Liability limited by a scheme approved under Professional Standards Legislation



**Estate and Advanced Care
Planning in South Australia**

Estate Planning

Estate planning addresses what is to happen to your real and personal property when you pass, namely one's Last Will and Testament (Will), and when you cannot deal with your affairs due to either being out of the jurisdiction (interstate or overseas) or becoming legally incapacitated.

Ensuring that your affairs are in order involves providing for both of the above instances which are equal in importance.

Last Will and Testament

It is essential that you have a Will which evidences your testamentary intentions.

Your Will should address what is to happen to real and personal property, who is to care for children, who is to be trusted with looking after your estate, how such person is to be remunerated for doing so and what arrangements are to be met in dealing with your body amongst other things.

People often defer completing a Will because they assume it is a more complex process than it really is or needs to be. In fact an experienced Lawyer can turn the Will making process into a very simple one indeed where the hardest thing to do is literally committing to making an appointment to meet with him.

Once done, your Will should be reviewed regularly to ensure that it meets with your current needs and intentions.

Finally, your Will should be kept with other important documents in a safe place. At Steven M Clark Pty Ltd we offer our clients a fireproof Safe Custody facility at no cost for our clients important papers to be stored which can be accessed during normal office hours.

General and Enduring Power of Attorney

It is important for the proper arranging of your affairs to ensure that you have also appointed an Attorney to handle legal and financial matters if you cannot do so yourself. Your Lawyer can assist you in that process.

The appointment of an Attorney either by way of a General or an Enduring Power of Attorney instrument enables the person so appointed – your Attorney, to make decisions about financial and legal matters.

A General Power of Attorney can confer upon the Donee the Power of the Donor to do things of a legal and/or financial nature as broadly or as confined as the Donor sees fit whether in terms of the range of things that he or she is authorised to do or as to duration as the Donee chooses.

An Enduring Power of Attorney differs from the General Power of Attorney in that the Enduring Power of Attorney endures the subsequent legal incapacity of the Donor and is the instrument most often used when one appoints an Attorney.

Advanced Care Planning (Advanced Care Directives Act 2013)

It is also important to have an Advance Care Directive in place.

There is now one (1) Advance Care Directive form for future health care, residential, accommodation and personal matters which will replace the previously existing (up to and including 30 June 2014) Enduring Power of Guardianship, Medical Power Of Attorney and Anticipatory Direction

The new Advance Care Directive will allow competent adults to:

- Write down their instructions, wishes and preferences for future health care, residential accommodation and personal matters and/or
- Appoint one or more substitute Decision-Makers to make decisions on their behalf.

The Advance Care Directive will apply to any period of impaired decision making capacity or as determined by the person making it.

An Advance Care Directive can be given by anybody over the age of 18 years of age who understands what an Advance Care Directive is, what it will be used for and when it will apply.

An Advance Care Directive must be made without any coercion, pressure or influence by others.

A valid Advance Care Directive takes effect or applies during any period of impaired decision-making capacity.

The Substituted Decision Maker

Health practitioners can rely on an Advance Care Directive and/or direction from a substituted decision maker appointed by you made in good faith and in the absence of negligence are protected from criminal and civil liability in doing so.

A valid Advance Care Directive is one which is signed by the person and witnessed by an authorised witness. Health practitioners can rely on a valid Advance Care Directive in good faith and have legal protection for doing so. The witness' role is to be satisfied that the person making the Advance Care Directive is competent and is completing the Advance Care Directive of his or her own free will.

If the Advance Care Directive is witnessed, it means on the face of it that the person was competent and completed the Advance Care Directive of their own free will when it was made.