

# Who can consent?



## Who can consent/refuse for a patient with impaired decision-making capacity?

### If there is an Advance Care Directive

- > If a Substitute Decision-Maker has been appointed with health care decision-making powers, they can consent or refuse to consent to health care, medical treatment and life sustaining treatment. A **Substitute Decision-Maker** must try and make a decision the person would have made in the circumstances.
- > If no Substitute Decision-Maker has been appointed but there is a relevant instruction in the Advance Care Directive – that relevant instruction is legally considered to be consent/ refusal of consent. *\*see ACD factsheet / FAQ*

### If no Advance Care Directive/ Substitute Decision-Maker or relevant instruction

- > A **Person Responsible** has legal authority and can provide/refuse consent, in the following legal order:
  1. **Guardian** with health care decision-making powers appointed by the SA Civil and Administrative Tribunal (formerly the Guardianship Board).
  2. **Prescribed relative**<sup>1</sup> with a close and continuing relationship available and willing to make the decision.
  3. **Close friend** available and willing to make the decision.

If none of the above:

4. **Someone charged with the day to day care and well-being of a patient** (eg Director of Nursing in aged care).
5. **SA Civil and Administrative Tribunal, upon application (last resort).**

A Person Responsible must try and make a decision the patient themselves would have made in the circumstances.

Health practitioners are protected for relying on consent/refusal in good faith and without negligence.

It is not the health practitioner's role to work out the 'close and continuing relationship' in relation to relatives and friends..

For advice or dispute resolution contact your local ACD mentor/advisor. If local advice or dispute resolution has not worked contact the Office of the Public Advocate Ph: 8342 8200 or Country free call 1800 066 969.

<sup>1</sup> Adult spouse or domestic partner or adult related by blood, marriage or adoption or Aboriginal kinship rules/marriage.

## For more information

**SA Health**  
**Finance and Corporate Services**  
**Email: [policy&legislation@health.sa.gov.au](mailto:policy&legislation@health.sa.gov.au)**  
Subject line: Advance Care Directive  
Public-I1-A1



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