Understanding the role of enduring documents

The Enduring Power of Attorney and Advance Health Directive

The Enduring Power of Attorney and Advance Health Directive are enduring documents that set out someone's views and wishes in case they are unable to make their own decisions in the future.

These documents must be created while an adult still has decision-making capacity, and come into effect should they later lose decision-making capacity. As legally recognised documents they must be followed when a decision needs making.

Therefore if a decision needs to be made for someone with impaired decision-making capacity you should make every effort to ascertain if these documents exist. If there is a nominated attorney, you should contact them so they can make the required decision.

What is an Enduring Power of Attorney?

An Enduring Power of Attorney allows someone to nominate a person or people to make decisions on their behalf if they lose the ability to make decisions for themselves in the future. It allows someone to specify their views, wishes and preferences to guide their decision maker when they are making decisions. As well as giving someone more control over their future, it also gives their family and friends direction to ensure they are safeguarding their wishes.

As noted above, there may be one person or several nominated as an attorney. If there is more than one person it may be that different people have responsibility for different areas of decision making, or that they can all make decisions on all areas, either individually or jointly. The Enduring Power of Attorney document will specify how decisions should be made and by who.

What is the role of an attorney under an Enduring Power of Attorney?

Essentially, an attorney makes decisions on behalf of a person when they are unable to do so themselves.

When the attorney takes on this role they must respect and protect the adult's rights, interests and opinions. This means they must always try and make decisions in line with the person's views, wishes and preferences. They also need to be guided by the General and Health Care Principles to ensure the person's human rights are always protected.

It's important to note that when an attorney is making a decision, they have the right to access the same information the adult could if they were making the decision for themselves, as outlined under the *Powers of Attorney Act 1998*. For example, an attorney has the right to access the adult's health record and seek a doctor's opinion before making a health care decision.

You can find more information about an attorney's role in our Responsibilities of an Attorney factsheet.

What is an Advance Health Directive?

An Advance Health Directive is a legal form that allows someone to give instructions for their future health care. It allows them to set out what medical treatment or health care they would like to receive or not receive in the event that they cannot make decisions for them self.

The directive can be used to express wishes in a general way, such as stating that they would want to receive all available treatment. But it also allows someone to be specific about different types of treatments, such as whether or not to receive life-sustaining measures, or to include specific information that a healthcare professional might need, including religious, spiritual and cultural considerations.

Where medical professionals are able to sight the Advance Health Directive of an adult with impaired decision-making capacity they should follow the instructions it contains if the directions in the document apply to the health matter.

What if there are no enduring documents?

If an adult with impaired decision-making capacity doesn't have enduring documents, decisions may be able to be made informally by friends and family.

However where a formal decision maker is needed, an application can be made to QCAT. QCAT will hold a hearing and decide who the most appropriate person in the adult's life is to make these decisions on their behalf. QCAT will normally appoint an adult's family member or friend as the adult's guardian, however if there is no one suitable in the person's life to take on this role, the Public Guardian can be appointed as guardian of last resort for personal and/or healthcare matters (in this scenario the Public Trustee of Queensland can be appointed for financial matters)

If it is only health care decisions that are required, it isn't always necessary to appoint a guardian, as these decisions can be made by a Statutory Health Attorney. A Statutory Health Attorney is not a nominated position, but takes effect automatically when a health care decision needs making for an adult with impaired decision-making capacity.

A Statutory Health Attorney is the first available and culturally appropriate adult (over the age of 18) from the following:

- spouse or de facto partner (where the relationship is close and continuing)
- a person who is responsible for the adult's primary care but is not a the adult's health provider, a service provider for a residential service where the adult is a resident, or a paid carer (although they can receive a carer's pension) or
- a friend or relative in a close personal relationship with the adult. Relation can also include a person who under Aboriginal tradition or Torres Strait Islander custom is regarded as a relation.

If there is no one suitable or willing, then the Public Guardian can act in this role as a last resort. More information is available in our Statutory Health Attorney factsheet or on our website.

Where can a person's enduring documents be found?

There is no official register for enduring documents, so it's important to speak to the adult and their support network – including their friends, family, doctor or lawyer – to determine whether these documents have been made.

For more information

For more information about an Enduring Power of Attorney and Advance Health Directive, go to our website, call us on 1300 653 187 or email *publicguardian@publicguardian.qld.gov.au*

Contact us

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If you need translation services, contact the Translating and Interpreting Service on 131 450.