

# Advance care planning and the law: Australian Capital Territory

This factsheet gives specific information about advance care planning and Australian Capital Territory (ACT) law.

## Statutory advance care planning documentation

**Health Direction** is the formal document recognised by legislation. It comes into effect if a person loses capacity (cannot make or communicate their decisions). The Health Direction allows the refusal or withdrawal of medical treatment (but not palliative care).

## Formal requirements for advance care planning documents

The Health Direction must be on the recommended form, unless the Health Direction is made orally. The form must be signed by two witnesses present at the same time with the person making the direction. An oral health direction must be witnessed by two health professionals one of whom is a doctor, both present at the same time.

If the formal requirements, such as use of correct form and the witness requirements are not met, then the directive is invalid.

## Amending or revoking advance care planning documents

A person may revoke their health direction in writing or orally by clearly expressing a decision to revoke it. The legislation is silent about amending a health direction. A person who wants to amend their health direction should be encouraged to revoke it and make a new one.

## Non-statutory advance care planning documents

ACT allows for informal advance care planning documentation such as an Advance Care Plan Statement of Choices, as a written and/or a verbal plan, with general statements about preferences and values. Though non-binding it may be taken into consideration under common law.

## Health care professionals' obligations

A health care professional must not comply with a Health Direction unless they believe, on reasonable grounds, that the direction complies with the legislation and the person who made the directive has not revoked it or changed their decision since making it.

## Advance care planning in context of mental health

A person can make an Advance Agreement in relation to care and treatment preferences and/or an Advance Consent Direction in relation to consent or refusal for treatment for mental health matters .

## Substitute decision-maker

A substitute decision maker may be nominated by the person, appointed by a tribunal or by default under legislation.

## Attorney

One or more adults can legally be appointed into this role by completing the Enduring Power of Attorney form. It must be a person, a corporation cannot be appointed, except for the Public Trustee and Guardian. The person can make decisions relating to refusal / withdrawal of treatment as well as consent for procedures but not a special health care matter, abortions, reproductive sterilisations and removal of non-regenerative tissue for transplantation or a medical research matter.

## Guardian

A guardian is appointed by the Australian Capital Territory Civil and Administrative Tribunal. The person can make decisions relating to healthcare but cannot consent to prescribed medical procedures, abortions, reproductive sterilisations and removal of non-regenerative tissue for transplantation.

## Health attorney

Default substitute decision-maker, the person designated under the law if no guardian or attorney appointed.

1. Domestic partner
2. Carer for the person
3. Close relative or close friend



## Does a Health Direction apply in other states?

A Health Direction made in ACT will apply in:

- Northern Territory, however the substitute decision-maker needs to work within the requirements of Northern Territory
- Queensland, if it aligns with the provisions included in the Queensland Advance Health Directive
- South Australia as long as it complies with South Australian law
- Western Australia, if an order is made by the State Administrative Tribunal to recognise the plan
- Victoria from 12 March 2018, if it complies with Australian Capital Territory and Victorian law it will be recognised as a values directive

In New South Wales and Tasmania there is no law in place to recognise advance care planning documentation from other states. Further advice should be obtained from the Office of the Public Advocate in the relevant state or territory.

## Where can I get more information?

Advance Care Planning Australia:

[advancecareplanning.org.au](http://advancecareplanning.org.au)

National Advisory Service: 1300 208 582