

Advance care planning and the law: Tasmania

This factsheet gives specific information about advance care planning and Tasmanian (TAS) law.

Advance care planning statutory documentation

In Tasmania there is no legislation about advance care planning however an **Advance Care Directive** maybe recognised as being valid by common law. It comes into effect if a person loses capacity (cannot make or communicate their decisions). In Tasmania, the directive allows the refusal or withdrawal of medical treatment and consent to commencement of future treatments.

Formal requirements for advance care planning documents

The Advance Care Directive should be on the recommended form provided by the Department of Health and Human Services Tasmania, or similar. The witness must be over 18 years, unrelated to the person, not a beneficiary of their will, or a paid carer.

The witness needs to confirm the identity of the person making the directive and/or the person responsible, believe that the person understands the nature of the document, and be confident that the person is under no duress.

Amending or revoking advance care planning documents

A person who wants to amend their plan should be encouraged to rewrite their advance care directive to revoke the existing plan however this is not a legislated requirement.

Non-statutory advance care planning documents

Tasmania allows for informal advance care planning documentation such as a written plan with general statements about preferences and values.

Health care professionals' obligations

The common law applies. If the advance care directive complies with the common law requirements, a health care professional should comply with it.

Advance care planning in context of mental health

In Tasmania there is no legislation regarding the recording of mental health preferences, however preferences may be recorded on the Advance Care Directive.

Substitute decision-maker

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

Enduring Guardian

One or more adults can be appointed into this role by completing the Appointing Enduring Guardians(s) form. Someone who is responsible for or involved in the person's medical care cannot be appointed.

This form must be registered with the Guardianship & Administration Board (via Service Tasmania).

The person can make decisions relating to refusal / withdrawal of treatment as well as consent for procedures. They cannot consent to special treatment (e.g. reproductive sterilisation, removal of non – regenerative tissue for transplantation).

Guardian

A guardian is a person appointed by the Tasmanian Guardianship and Administration Board. A guardianship order may be full or limited.

Person responsible

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

For a person under 18 years:

1. Spouse (if he/she has a spouse)
2. Parent (if he/she does not have a spouse)

For a person 18 years or older

1. Spouse
2. Carer
3. Close friend or relative



Does the advance care directive apply in other states?

An Advance Care Directive made in Tasmania 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 Victorian law it will be recognised as a values directive

In the Australian Capital Territory and New South Wales 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

National Advisory Service: 1300 208 582