

## Advance care planning and the law: **New South Wales**

Advance care planning is about your future health care. It gives you the opportunity to plan for what you would want or not want, if you become unable to make or communicate your own preferences. This factsheet is about advance care planning, New South Wales (NSW) law and the recommended documentation.

### Why should I think about advance care planning?

To make medical decisions, you must have decision-making capacity. If illness or serious injury (temporary or permanent) prevents you from making decisions about your health care, advance care planning makes sure that your values, beliefs and preferences for treatment and care are understood and respected. Completed and accessible Advance Care Directive documentation allows you to be heard and is important to your treating team and others.

### How to do advance care planning

Advance care planning is an ongoing process with a number of steps.

#### Be open

- Think and talk about your values, beliefs and preferences for current and future health care.
- Choose a substitute decision-maker: someone you trust to speak for you if you became very sick and couldn't speak for yourself. Ask them if they are prepared to be your substitute decision-maker.

#### Be ready

- Talk about your values, beliefs and preferences with your substitute decision-maker and other people involved in your care such as family, friends, carers and doctors.
- Write your preferences and/or appoint your substitute decision-maker using the recommended Advance Care Directive document(s).

#### Be heard

- Share your Advance Care Directive documentation with your substitute decision-maker, family, friends, carers and your doctors. This will help ensure everyone knows what you want.
- Upload your completed documents to your My Health Record.
- Review your plan regularly and update it as needed.

### Who will speak for you?

If you become unable to make decisions about your own health care, a substitute decision-maker will make decisions on your behalf.

Your substitute decision-maker may be:

- Chosen and appointed by you
- Appointed for you by a guardianship tribunal
- Identified for you by a default list under legislation.

Your substitute decision-maker is the first of the following who is available, willing and able to make decisions:

1. An **enduring guardian(s)** appointed by you.
2. A **guardian** appointed by the New South Wales Civil and Administrative Tribunal to make decisions about your medical treatment.
3. The first of the following (**person responsible**):
  - a. Your spouse or partner where there is a close and continuing relationship
  - b. Your unpaid carer
  - c. A friend or relative who has a close personal relationship, frequent contact and a personal interest in your welfare.

### Advance Care Directive – appointing your substitute decision-maker

In New South Wales, the substitute decision-maker appointed by you is an **enduring guardian**.

You may want to choose and appoint one or more adults to this role. To do this, you need to complete the *Appointment of enduring guardianship* form. The form has specific requirements for completion and witnessing. Your chosen enduring guardian must accept this role by signing the form.

Your enduring guardian can consent to or refuse treatment on your behalf. They must act in accordance with any lawful directions contained in the form. They must make the decision they believe you would make if you could make your own decision. For this reason, it is helpful to talk to them about what is important to you and any preferences you have.

### Advance Care Directive – preferences for care

In your Advance Care Directive, you can write:

- An instructional directive with legally binding instructions about future medical treatment you consent to or refuse
- A values directive which documents your values and preferences for your substitute decision-maker to consider when making decisions for you
- Details of your person(s) responsible or enduring guardian(s).

Medical treatment includes treatment for physical and/or mental conditions. You can use a form or similar when completing your Advance Care Directive. It is preferable that this document is signed and dated. Commonly, these documents also include details regarding your organ donation status.

Prior to completing an Advance Care Directive, you should read the booklet *Making an Advance Care Directive*, New South Wales Health.

Upload your completed enduring guardian form and your Advance Care Directive to your My Health Record.

### Making changes

We recommend that you review your decisions and documents regularly. This is particularly important if there is a change in your health, personal or living situation. You can update your Advance Care Directive or your appointment of an enduring guardian at any time providing you still have decision-making capacity.

Your Advance Care Directive ends when you complete a new Advance Care Directive, you revoke it, it expires (if an expiry date is included) or you die. You should let others know of any changes, and provide updated copies.

Your enduring guardian appointment(s) ends if you revoke it, if the people appointed are unable to act, resign their appointment, or if you die.



### Will my Advance Care Directive apply in other states and territories?

In general, a valid Advance Care Directive will apply in other places in Australia, although there may be some limitations and additional requirements. Similarly, an appointment of enduring guardian will usually apply, but there is variation in the laws within Australia.

It is recommended that you obtain specific advice from the Office of the Public Advocate or equivalent in the relevant state or territory.

If you are permanently moving state or territory, it is recommended you update your documentation using the recommended form(s) in consultation with your doctor and substitute decision-maker.

### Where can I get more information?

Advance Care Planning Australia

- 📄 [advancecareplanning.org.au](http://advancecareplanning.org.au)
- 📞 National Advisory Service: 1300 208 582
- 🎓 [learning.advancecareplanning.org.au](http://learning.advancecareplanning.org.au)
- 📍 Forms for your state or territory