

# Advance care planning and the law: Northern Territory

This factsheet gives specific information about advance care planning and Northern Territory (NT) law.

## Statutory advance care planning documentation

An **Advance Personal Plan** can include formal documentation known as Advance Consent Decisions which are recognised by legislation. It comes into effect if a person loses capacity (cannot make or communicate their decisions). The plan allows the refusal or withdrawal of medical treatment and consent to commencement of future treatments.

## Formal requirements for advance care planning documents

The Advance Personal Plan should be on the recommended form or similar. The form must be signed by an authorised witness. An advance personal plan must be signed by an authorised witness who must certify the identity and age of the person making the plan, that it appears that the person making the plan understands the nature and effect of it, and that the plan was signed in the witness's presence. The plan must contain the adult's full name, date of birth and residential address, as well as the full name, residential address, phone number and email address of any appointed decision makers. Though not mandatory, the plan may be registered with the Public Trustee.

If the formal requirements are not met, this means the plan is invalid. However the Northern Territory Civil and Administrative Tribunal may declare an advance personal plan to be a valid advance personal plan despite non-compliance with formal requirements.

## Amending or revoking advance care planning documents

If a person amends an Advance Personal Plan this does not automatically revoke the existing plan. If a person has made two or more advance personal plans that are inconsistent, the most recently made plan prevails to the extent of the inconsistency. A person may revoke an advance personal plan, but the legislation is silent as to how.

## Non-statutory advance care planning documents

The Northern Territory allows for informal advance care planning documentation such as Advance Care Statements, with general statements about preferences and values. Though non-binding may be taken into consideration under common law.

## Health care professionals' obligations

A health care professional is obliged to comply with advance consent decisions in an advance personal plan, unless the Court orders that it be disregarded.

## Advance care planning in context of mental health

The Advance Personal Plan can include preferences relating to healthcare of any kind, including mental health treatment.

## Substitute decision-maker

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

### Decision Maker

One or more adults can be appointed into this role by way of an Advance Personal Plan. The person can make decisions relating to refusal / withdrawal of treatment as well as consent for procedures except for a restricted health care action (which includes termination of pregnancy, sterilisation and removal of non- regenerative tissue).

### Guardian

A guardian is a person appointed by the Northern Territory Civil and Administrative Tribunal (NTCAT), with the powers set out in the relevant guardianship order. The guardian may do anything the person could lawfully do.

### Default decision makers

A default substitute decision-maker hierarchy is not designated under the law in the Northern Territory. If there is no available consentor (decision maker or guardian) who is able to make an informed consent decision then an application can be made to the NTCAT.



## Does the advance personal plan apply in other states?

An Advance Personal Plan made in Northern Territory will apply in:

- 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 Northern Territory and Victorian law it will be recognised as a values directive

In the Australian Capital Territory, 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