

Advance care planning and the law: Queensland

This factsheet gives specific information about advance care planning and Queensland (QLD) law.

Statutory advance care planning documentation

Advance Health Directive is the formal document recognised by legislation. It comes into effect if a person loses capacity (cannot make or communicate their decisions). The directive allows the person to consent to or refuse medical treatment. It can only contain directions that a life-sustaining measure be withheld if certain criteria are met (see health care professionals' obligations).

Formal requirements for advance care planning documents

The Advance Health Directive should be on the recommended form or similar. The form must be signed by an eligible witness and include a certificate signed and dated by a doctor confirming the person's capacity. The doctor must not be the person witnessing the directive.

If the formal requirements are not met but the advance health directive complies with common law requirements then this means the directive should be valid.

Amending or revoking advance care planning documents

A person may revoke their Advance Health Directive in writing. The revocation does not need to be in a prescribed or approved form. Creating a new advance health directive revokes an earlier one.

Non-statutory advance care planning documents

Queensland allows for informal advance care planning documentation such as a Statement of Choices, 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 comply with an Advance Health Directive, subject to some exceptions. If the direction relates to withholding or withdrawing a life-sustaining measure, it will only apply if certain criteria are satisfied:

- the person who has given the direction has a terminal illness or incurable or irreversible condition which he/she is reasonable expected to die from within one year, or he/she is in a persistent vegetative state, or he/she is permanently unconscious (i.e. in a coma), or he/she has an illness or injury of such severity that there is no reasonable prospect that he/she will recover to the extent that his/her life can be sustained without the continued application of life-sustaining measures; and
- for a direction to withhold or withdraw artificial nutrition or artificial hydration the commencement or continuation of the measure would be inconsistent with good medical practice; and
- the person has no reasonable prospect of regaining capacity for health matters.

Advance care planning in context of mental health

The Advance Health Directive can include directions relating to mental health treatment. However, there is also an Advance Health Directive for Mental Health form that can be completed.

Substitute decision-maker

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

Attorney for an Advance Health Directive

One or more adults can be appointed into the role of an Attorney by completing an Enduring Power of Attorney form. An Attorney for an Advance Health Directive is appointed by completing Advance Health Directive. A paid carer, health provider or service provider of a person's residential service cannot be appointed.

The appointed person can make decisions relating to healthcare decisions but not special health matters e.g. sterilisation, termination of pregnancy, removal of non-regenerative tissue and electroconvulsive therapy.

Guardian

A guardian is a person appointed by the Queensland Civil and Administrative Tribunal (QCAT). A guardianship order may be continuing or temporary. QCAT can order to consent to special health matters only if no other entity is authorised to do so.

Statutory health attorney

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

1. Spouse or domestic partner
2. A person who is at least 18 years old and provides (unpaid) care to the patient
3. Adult who is a close friend or relation of the patient.



Does the advance care directive apply in other states?

An Advance Care Directive made in Queensland will apply in:

- Northern Territory, however the substitute decision-maker needs to work within the requirements of Northern Territory
- 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 Queensland 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

National Advisory Service: 1300 208 582