

## **Advance care planning and the law: Western Australia**

This factsheet gives specific information about advance care planning and Western Australian (WA) law.

### **Advance care planning statutory documentation**

An **Advance Health Directive** is the formal document recognised by law. It comes into effect if a person loses capacity (cannot make or communicate their decisions). The directive allows for the refusal or withdrawal of medical treatment and consent to commencement of future treatments.

### **Formal requirements for advance care planning documents**

The Advance Health Directive should be on the recommended form or substantially similar. The form must be signed by the person making it and must be witnessed by two people. At least one of those witnesses must be authorised by law to take declarations.

If the formal requirements are not met, then this means the directive may be invalid. If an advance care document is invalid because it does not meet the formal requirements of the legislation, it may still be valid under common law.

### **Amending or revoking advance care planning documents**

There are no formal requirements for a person who wants to revise or revoke their existing plan. A person who wants to amend their plan should be encouraged to rewrite it. A treatment decision in an advance health directive is taken to have been revoked if the person making the directive has changed his or her mind about the treatment decision since making the directive.

### **Non-statutory advance care planning documents**

Western Australia allows for informal advance care planning documentation, an Advance Care Plan, with general statements about preferences and values.

### **Health care professionals' obligations**

A health care professional is not obliged to comply with an advance health directive if circumstances have arisen that the person who made the directive would not have reasonably anticipated when he/she made the directive, or would cause a reasonable person to change his/her mind about the direction.

### **Advance care planning in context of mental health**

The advance health directive can include preferences relating to 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.

## Enduring Guardian

One or more adults can be appointed by the person into this role by completing the Enduring Power of Guardianship. If more than one enduring guardian appointed they must act jointly on any decisions. The appointed guardian must be aged over 18 years with decision making ability and be a person not an organisation.

The enduring guardian can make decisions relating to refusal / withdrawal of treatment as well as consent for procedures. They cannot consent to sterilisation of the person.

## Guardian

A guardian is a person appointed by the State Administrative Tribunal. A guardianship order may be plenary (full) or limited. The Tribunal may give directions as to the guardian's function.

## Person responsible

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

1. spouse or de facto
2. nearest relative:
  - i. child
  - ii. parent
  - iii. sibling
3. primary unpaid care giver
4. Other adult with close personal relationship



## Does the advance care directive apply in other states?

An Advance Care Directive made in Western Australia will apply in:

- South Australia as long as it complies with South Australian law
- Northern Territory, the substitute decision-maker needs to work within the requirements of NT
- Queensland, if it meets the Queensland Advance Health Directive requirements
- Victoria from 12 March 2018, if it complies with Western Australian 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 recognising advance care planning documents 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