

ADVANCE CARE PLANNING

Advance Care Planning gives you the opportunity to plan for your future health needs if you become unable to make or communicate your own preferences.

To make legal medical decisions you must have decision-making capacity. If an injury or illness prevents you from being able to make decisions about your health care, an Advance Care Plan ensures that your wishes are followed even though the Advance Care Plan is not a legally binding document.

Who will represent you if you are unable to make decisions on your own behalf?

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

The decision-maker is the first of the following who is willing and able to make decisions on your behalf:

1. An Enduring Guardian appointed by you.
2. A Guardian appointed by the State Administrative Tribunal (State Administrative Tribunal).
3. The first of the following, as identified by the medical practitioner or as made known to the medical practitioner:
 - The spouse or de factor partner
 - The nearest adult child
 - The nearest parent
 - The nearest sibling
 - Another adult with a close person relationship to you

Advance Health Directives

Advance care planning can involve making an Advance Health Directive (AHD). An Advance Health Directive is a legally recognised document governed by the *Guardianship and Administration Act 1990*.

The *Guardianship and Administration Act 1990* recognises that people who are not capable of making reasonable judgements for themselves may need someone to make decisions for them, not only to ensure their quality of life is maintained, but also to protect them from the risk of neglect, exploitation and abuse.

To view the *Guardianship and Administration Act 1990* go to:

https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_406_homepage.html

What is an Advance Health Directive?

An Advance Health Directive provides an instructional directive with legally binding instructions about the future medical treatment you consent to or refuse. If you do not have an Enduring Power of Guardianship in place, then an Advance Health Directive allows you to appoint an enduring guardian.

An Advance Health Directive records a competent adult's decisions about possible future treatment.

Treatment decisions recorded in a valid Advance Health Directive must be followed in circumstances when you can no longer make or communicate the decisions on your own behalf.

Treatment includes medical, surgical and dental treatment, palliative care and other health care. You can make an Advance Health Directive in which you either agree to or refuse consent for future treatment.

When does an Advance Health Directive come into effect?

The 'Advance Health Directive' comes into effect at any time you are unable to make a reasonable judgement about a treatment decision, for example, you become unresponsive after a serious accident.



What are the formal requirements to make an Advance Health Directive?

The Advance Health Directive is dependent on you:

- Being over the age of 18 years
- Having decision-making capacity at the time of making the Advance Health Directive to act on your own behalf
- Understanding the nature of the treatment decision being made and its consequences
- Making the Advance Health Directive voluntarily and not as the result of inducement or coercion
- Being encouraged to seek legal or medical advice

You have legal capacity if you are capable of understanding the nature, purpose and consequences of the medical treatment over which you are making the decision.

The Advance Health Directive must:

- Be in the prescribed form or substantially in the prescribed form
- Be signed by you or someone directed to sign by you in your presence
- Be witnessed by two (2) people who are over 18 years of age, one of whom is authorised to take declarations such as a Justice of the Peace
- You and each witness must sign the Advance Health Directive in each other's presence

For further details about witness requirements contact the Office of the Public Advocate WA

T: 1300 858 455

Address: 23 David Malcolm Justice Centre, Perth WA 6000

E: opa@justice.wa.gov.au

W: <https://www.publicadvocate.wa.gov.au/>

What is an invalid treatment decision under an Advance Health Directive?

An **invalid treatment decision** under an Advance Health Directive occurs when:

- It was made involuntarily, e.g., if you were pressured by someone to make the treatment decision
- It was made as a result of inducement; for example, if you were told that they or another person close to you would receive some financial benefit if you agreed to make the treatment decision
- It was made as a result of coercion; for example, if you were told that your family would only continue to care for you if you agreed to make a treatment decision
- At the time that you made it, you did not understand the treatment decision; for example, if you made a treatment decision and you did not know what it involved or what the risks of the treatment were
- At the time that you made it, you did not understand the consequences of making the treatment decision; for example, if you did not understand that the treatment you refused consent for was necessary to save your life

If there is any doubt about the validity of your Advance Health Directive or a treatment decision in your Advance Health Directive, an application can be made to the State Administrative Tribunal for determination of validity.

State Administrative Tribunal

The State Administrative Tribunal can be contacted for information and advice on applications for Guardianship, Administration, Enduring Powers of Guardianship, Enduring Powers of Attorney and Advance Health Directives.

Address: Level 6, State Administrative Tribunal Building, 565 Hay Street, Perth WA 6000

T: 08 9219 3111

E: sat@justice.wa.gov.au

W: www.sat.justice.wa.gov.au

How are treatment decisions made if a person does not make an Advance Health Directive?

If you do not make an Advance Health Directive, and you become incapable of making decisions, the treatment decision will be made on your behalf by the first person in the hierarchy of decision-makers.



Who can witness a person's Advance Health Directive?

Examples of people who can witness a person's Advance Health Directive are:

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| ▪ Academic (post-secondary institution) | ▪ Local Government Councillor |
| ▪ Accountant | ▪ Loss Adjuster |
| ▪ Architect | ▪ Marriage Celebrant |
| ▪ Australian Consular Office | ▪ Member of Parliament |
| ▪ Australian Diplomatic Officer | ▪ Midwife |
| ▪ Bailiff | ▪ Minister of Religion |
| ▪ Bank Manager | ▪ Nurse |
| ▪ Chartered Secretary | ▪ Optometrist |
| ▪ Chemist | ▪ Paramedic |
| ▪ Chiropractor | ▪ Patent Attorney |
| ▪ Company Auditor or Liquidator | ▪ Physiotherapist |
| ▪ Court Officer | ▪ Podiatrist |
| ▪ Defence Force Officer | ▪ Police Officer |
| ▪ Dentist | ▪ Post Office Manager |
| ▪ Doctor | ▪ Psychologist |
| ▪ Electorate Officer of a Member of State Parliament | ▪ Public Notary |
| ▪ Engineer | ▪ Public Servant (Commonwealth or State) |
| ▪ Industrial Organisation Secretary | ▪ Real Estate Agent |
| ▪ Insurance Broker | ▪ Settlement Agent |
| ▪ Justice of the Peace | ▪ Sheriff or Deputy Sheriff |
| ▪ Landgate Officer | ▪ Surveyor |
| ▪ Lawyer | ▪ Teacher |
| ▪ Local Government CEO | ▪ Tribunal Officer |
| ▪ Local Government Deputy CEO | ▪ Veterinary Surgeon |

Do you need medical or legal advice to make an Advance Health Directive?

You are not required to obtain, but encouraged to seek medical or legal advice when making an Advance Health Directive.

It may be useful to do so, in order to ensure that all possible options have been considered in your best interests.

In the event that there is later uncertainty about your Advance Health Directive, the person who provided you with medical or legal advice may be able to assist in ensuring your treatment decisions are respected.

Can you change or withdraw your Advance Health Directive?

You can change or withdraw your Advance Health Directive if you have full legal decision-making capacity.

For further information in relation to revoking your Advance Health Directive please contact the Advance Care Planning telephone support line.

T: 08 9222 2300

Address: Department of Health 189 Royal Street, East Perth WA 6004

E: acp@health.wa.gov.au

W: www.health.wa.gov.au/advancecareplanning

How do you make an Advance Health Directive?

You can make an Advance Health Directive using the following methods.

1. To make an Advance Health Directive, you must complete the relevant form that is specified in the Guardianships and Administration 2005 Regulations.

Go to: Office of the Public Advocate and download for free the **Advance Health Directive Form**:

<https://ww2.health.wa.gov.au/~media/HWA/Documents/Healthy-living/End-of-life/Advance-Health-Directive.pdf>

2. To make an Advance Health Directive, you can also see the booklet: **A Guide to making an Advance Health Directive in Western Australia** to help you through the process.

Go to: Department of Health and download for free the booklet: **A Guide to making an Advance Health Directive in Western Australia**:

<https://ww2.health.wa.gov.au/~media/HWA/Documents/Healthy-living/End-of-life/Advance-Health-Directive-Guide.pdf>

You can also order the form and workbook by calling or emailing:

T: 08 9222 2300

E: acp@health.wa.gov.au

For further details about Advance Health Directives

Department of Health WA

T: 08 9222 2300

Address: P.O. Box 8172 Perth Business Centre, Perth WA 6949

E: acp@health.wa.gov.au

W: www.health.wa.gov.au/advancecareplanning

State Administrative Tribunal

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