



Advance Health Directives

What is an Advance Health Directive?

An Advance Health Directive is a Queensland legal document that allows you to make directions about your future health care.

Your Advance Health Directive will be used by your health care professionals, only if you are no longer capable of making and/or expressing your decisions and wishes. This may be because of an accident, sudden medical event or terminal illness.

You can make directions about general health care (which includes life-sustaining treatments) and special health care, which includes procedures like tissue donation, sterilisation, termination of pregnancy, electroconvulsive therapy, participation in medical research and experimental health care.

You can also appoint someone you trust to make decisions about your health care on your behalf (your 'health attorney'). However, we recommend that everyone over 18 makes an Enduring Power of Attorney, which allow you to nominate those you trust to make personal/health **and** financial decisions on your behalf. For more information, please see our Enduring Power of Attorney fact sheet.

Each state and territory of Australia has different advance care planning laws. If you are unsure whether your document will be recognised in Queensland, please seek legal advice.

Who can make an Advance Health Directive?

You can make an Advance Health Directive if you are over 18 and have the capacity to understand the document you are signing, the powers it gives and the consequences of the directions you have given. You must also be capable of making your Advance Health Directive freely and voluntarily, not due to pressure from someone else.

Why should I make an Advance Health Directive?

It is recommended that you make an Advance Health Directive if:

- you feel very strongly about what medical treatment you want, or do not want, to receive; and/or
- you would prefer not to burden others who have legal authority to make decisions about your general health care (including the continuation or withdrawal of life-sustaining treatments) in what may be an extremely emotional time for them; and/or
- there is potential for conflict between those with legal authority to make your health care decisions and others (ie. second spouses and your adult children).

When should I make an Advance Health Directive?

It is best to make an Advance Health Directive while you are fit, health and have the required mental capacity.

You should make an Advance Health Directive as soon as possible if:

- you would like to set out your future health care directions and wishes in black and white for your loved ones and health care professionals;
- you are about to be admitted to hospital for a medical procedure; or
- you have recently been diagnosed with a terminal illness or a medical condition which is likely to affect your ability to make decisions in the future (eg. cancer, Parkinson's disease, motor neuron disease).

Will my directions about life-sustaining treatment be followed?

Your directions about life-sustaining treatment will be followed if you are reasonably unlikely to regain the capacity to make your own health care decisions and:

- in the opinion of two doctors, you are reasonably likely to die in the next 12 months;
- there is no reasonable prospect that you will recover to the extent that you can live without life-sustaining treatment;
- you are permanently unconscious (with no reasonable prospect of regaining consciousness);
- you are in a persistent vegetative state (involving severe and irreversible brain damage);
- your directions are clear and will benefit you;
- your directions are consistent with good medical practice;
- advances in medicine have not changed to the point that your directions are no longer appropriate.

Voluntary Assisted Dying v Advance Health Directive

You cannot request voluntary assisted dying ('VAD') in an Advance Health Directive, and it does not allow your health care professionals to help you die.

In Queensland, the eligibility criteria for voluntary assisted dying is very strict. You must have decision making ability to apply for voluntary assisted dying. This means that no-one else can make this decision on your behalf and if you have been approved under the VAD legislation, your Advance Health Directive will not be followed.

Dying with Dignity

Many people express in their Advance Health Directive that they consider dignity and quality of life to be more important than mere existence and request that they be given sufficient medication to control their pain, even if this may hasten their death.

It does allow you to provide directions about life-sustaining treatment (including refusal of treatment) like CPR, assisted ventilation and artificial nutrition. It is important that you discuss these options with your doctor.

Who makes my health care decisions if I do not have an Advance Health Directive?

If you have an Enduring Power of Attorney in place appointing a personal/health attorney (your 'health attorney'), your attorney has authority to make most health care decisions for you if you do not have the capacity to do so yourself.

If you have not appointed a health attorney under an Enduring Power of Attorney, certain family members are recognised by law as your 'statutory health attorney' and they will have the authority to make most health-related decisions for you.

You are not able to decide which family member is your statutory health attorney and the person legally authorised may not be the person you would have chosen to make these types of decisions for you.

Your health attorney or statutory attorney do not have authority to make special health care decision on your behalf. If your medical professionals recommend you undergo a special health care procedure and you do not have capacity, the procedure will need to be approved by the relevant court or tribunal, depending on your circumstances (ie. Mental Health Tribunal).

Can I change or revoke my Advance Health Directive?

You can change or revoke your Advance Health Directive at any time provided you:

- understand the consequences of changing or revoking it; and
- freely and voluntarily make the decision to do so; and
- can communicate your decisions to do so in some way.

How do I make an Advance Health Directive?

Start with a conversation. Talk with your close family and friends about what is important to you.

You will then need to

1. consider whether making an Advance Health Directive or appointing a health attorney under this document will affect any of your existing legal documents (especially your Enduring Power of Attorney);
 2. make a long consultation with your doctor to talk about your treatment options. Your doctor is required to sign your Advance Health Directive;
- meet with a justice of the peace, commissioner for declarations or lawyer ('eligible witness') to sign your Advance Health Directive in their presence. Your eligible witness must see you sign the document and complete a witnessing certificate;
 - if you have appointed a health attorney, have them sign the Attorney's acceptance
 - make certified copies and give them to those who need to know about your decisions (eg. your health attorney, your doctor, your local hospital);
 - keep the original in a safe place;
 - let your close friends and family know that you have made an Advance Health Directive.

Help me make an Advance Health Directive

Life Legal Will and Estate Services can help you make an Advance Health Directive, either as a stand-alone document or as part of your overall estate plan.

If you would like further information or pricing, please visit www.lifelegal.com.au or call us for a free 15 minute discussion.

The information contained in this document is for general guidance only. It should not be used as a substitute for legal advice tailored to your individual situation. While Life Legal has made every attempt to ensure the information in this document is correct at the time of publication, we are not responsible for any errors, omissions or for results obtained from the use of this information.