

Estate Planning – Advance Care Directive

An Advance Care Directive can help to give you peace of mind knowing that those caring for you will know your wishes for medical treatment and care if you are no longer able to make or express your own wishes. You may also be able to name someone to speak on your behalf.

The document may also be known as an 'Advance Health Directive' or 'Advance Care Plan' depending on the State or Territory in which you reside.

How it works

An Advance Care Directive is a legal document detailing your wishes, preferences, and instructions for your living arrangements, personal matters, future health care, and end-of life decisions should your decision-making ability be impaired. The document may also allow you to appoint a decision maker to act on your behalf should you not be in a position to make certain decisions for yourself.

This document does not cover financial or lifestyle decisions so it is important to have an advanced care directive in conjunction with your Will and Enduring Powers of Attorney and Guardianship.

When choosing your substitute decision-maker, you can appoint a trusted friend or family member solely, jointly, or in conjunction with a solicitor or professional trustee company. The person you choose must be comfortable taking on this responsibility. To help relieve this burden, it may be a good idea to explain any wishes you have with your chosen person and your family in advance.

You can revoke or change the directive by making a new Advance Care Directive.

Benefits

The benefits of having an Advance Care Directive may include that it helps:

- Ensure that your affairs may be conducted in a manner similar to how you would conduct them.
- provide a clear decision-making framework when trying to establish care decisions.
- allow you to document your preferences/instructions for your health care, end-of-life, living arrangements and/or personal matters, should your decision making ability be impaired. For example, the types of life sustaining measures you want in the event of terminal, incurable or irreversible conditions, such as resuscitation, ventilation or nutrition.
- allow you to appoint decision makers to make these decisions on your behalf, if you are not in a position to make decisions yourself. This component is often referred to as a 'Medical Power of Attorney'.

Risks, consequences and other important things to consider

These include:

- You should review your Advance Care Directive regularly to ensure it continues to be appropriate for your circumstances.
- Legislation relating to Advance Care Directives/Powers of Attorney varies between Australian States and Territories. You should seek legal advice to have the power correctly drafted for the relevant state legislation.

- An Advance Care Directive can only be signed whilst you are competent to do so. You can enforce a new Advance Care Directive at any time (thereby revoking any existing Advance Care Directive) whilst you are competent to do so.
- This Advance Care Directive is not a Will. It also cannot be used to make financial or legal decisions. It is recommended you think about appointing an Enduring Power of Attorney and an Enduring Power of Guardian to make decisions about your future finances and legal matters.
- You should obtain professional legal advice when considering your estate planning needs.

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