

Advance Care Directives

Information Sheet

What is advance care planning

Advance care planning is the process of considering and planning for your future health care for use at a time when you lose the ability to make or communicate these decisions yourself due to injury or illness.

What is an advance care directive

An advanced care directive (ACD) is the written document that contains your wishes and directions so health practitioners understand what is important to you, and what medical treatments you do not want. A health Practitioner is a doctor or any other person authorised to provide you with treatment or care.

An ACD only comes into effect if you lose the ability (either permanently or temporarily) to make these decisions yourself.

The law in Tasmania that governs ACDs is the *Guardianship and Administration Act 1995*.

What is needed to make an ACD

To make an ACD, you must be able to:

- make decisions now about your future health care and treatment
- understand what an ACD is and the consequences of making one

If you or anyone else has concerns about your ability to make these decisions, please seek further medical advice.

You must make your ACD freely and voluntarily. Do not let anyone pressure you into including something you do not want.

If you cannot write or complete the ACD form yourself, someone you trust can do it for you. They must:

- follow **your** directions and include **your** wishes
- include their details and sign the form

Your ACD must be written in English. You should use a qualified interpreter if you need help writing in English. The interpreter will also have to sign your ACD.

Witnesses for ACDs

Two independent people must witness your ACD. In some cases, the witness must be a registered health practitioner.

The people who witness your ACD must be over 18 and they must NOT:

- be your carer (whether they are paid or voluntary)
- be the person who has helped complete your ACD or signed the ACD on your behalf
- be a close relative
- be your guardian under the *Guardianship and Administration Act 1995*
- Not be a person who because of their position in a hospital, hospice, nursing home or other facility where you reside has a direct or indirect ability to control or influence your care and management at that facility
- Has a known interest in your estate

If you are under 18, one of the witnesses must be a registered health practitioner (see 'Making an ACD if you're under 18' in this fact sheet).

The witnesses must sign the ACD form, certifying that:

- they are satisfied as to your identity
- you appear to understand that the ACD is about your future health care
- you appear to understand the nature and effect of each statement in the ACD
- you appear to have signed the ACD freely and voluntarily in the witness' presence
- they are satisfied that the ACD reflects your directions and preferences

What to include in your ACD

Information about your values and wishes

You can include any information that is important to you about your values, wishes, beliefs and matters that are important for your quality of life. This information will guide your overall health care. Directives that relate to your values and wishes help people understand what is important to you, and those providing you with care are required to follow your wishes as much as it is reasonably practical to do so.

They might include:

- your spiritual, religious or cultural beliefs, practices or requirements
- your preferred place of care
- your preferred place to die
- any other things that give your life meaning

Detail your values and wishes in Section 1 of the ACD form.

Medical Treatment you refuse

You can list specific treatments you do **NOT** want and under what circumstances you refuse them. Make sure you are as clear as possible about your directions. Clear instructions about the treatment you refuse will be legally binding. Which means that health practitioners will be required to follow them except in limited circumstances (see 'ACDs and Health practitioners' in this fact sheet).

Detail the treatments you wish to refuse in Section 2 of the ACD form.

A list of websites is included at the end of this fact sheet where you can find more information for you to think about.

Who to involve when making your ACD

Discuss your wishes and your ACD with people who are important to you, such as:

- family and friends
- your enduring guardian or any guardian appointed on your behalf
- your treating health practitioner and others involved in your care. This is important if you have complex or chronic medical conditions, or are nearing the end of your life

ACDs and Health Practitioners

Health Practitioners must follow the binding directions given in Section 2 of the ACD form:

- if it is medically appropriate
- if they are sure that you intended your refusal of treatment to apply to the circumstances at hand

However, health practitioners do NOT have to comply with your ACD where:

- your directions relate to health care that is unlawful, would require a person to do something unlawful, or would make the health practitioner breach professional standards
- your refusal relates to mandatory health care
- the health practitioner believes your directions do not apply in the circumstances, or don't reflect your current wishes
- your directions relate to health care or treatment that would have no benefit
- health care or treatment is urgently needed or being provided in an emergency; or
- your directions would result in health care or treatment being provided that isn't consistent with current standards in Tasmania

If a health practitioner has a 'conscientious objection' to carrying out the directions contained in your ACD, they must refer you to another health practitioner, and they must not do anything to stop your ACD from being put into effect.

Health practitioners (and anyone else legally authorised to implement your ACD) are protected from liability for anything they do to implement your ACD, as long as it is done in good faith and without negligence.

Making an ACD if you're under 18

If you are under 18, you can make an ACD if you are able to:

- make decisions now about your future health care and treatment
- understand what an ACD is and the consequences of making one

That means that you must be sufficiently mature to understand what is being proposed and have the capacity to make decisions about your own health care or treatment.

A registered health practitioner must witness your ACD and be qualified to attest that you are sufficiently mature to make these decisions.

Where to keep your ACD

You should:

- keep your original ACD at home where it can be easily found
- make copies and give them to your family, guardian, health practitioner, local hospital and others involved in your health care or treatment
- give your ACD immediately to paramedics if an ambulance is called for you

You can also:

- upload your ACD to your [My Health Record](#) through MyGov (www.myhealthrecord.gov.au/for-you-your-family)
- register your ACD with the [Tasmanian Civil and Administrative Tribunal](#). To find out more about how to do this go to www.tascat.tas.gov.au

Registering your ACD will make it easier for health practitioners and other health practitioners to get hold of your ACD if you are unable to give them a copy.

Changing or cancelling your ACD

You should review your ACD if your health or medical conditions change.

If you want to change your ACD, you will have to legally cancel it and make a new one. The ACD form has a section for you to state that you have legally cancelled your ACD.

If you do cancel your ACD you should notify anyone who has been given a copy of your ACD. This includes the Tasmanian Civil and Administrative Tribunal if you have registered the ACD with them.

The Tasmanian Civil and Administrative Tribunal can also revoke or amend an ACD in certain circumstances. This might be because there are concerns that you did not have the capacity to make the ACD or the instructions no longer apply. You or someone on your behalf should contact the Tasmanian Civil and Administrative Tribunal for further advice if you think this applies to you.

You can also include a date on which the ACD will expire if you only want it to apply for a short amount of time.

If you have a common law ACD

If you made an ACD before the changes to the *Guardianship and Administration Act* came into effect, the ACD can still be valid.

Non-written ACDs

If you are unable to write out an ACD, you can give one verbally or in any other way that makes clear your wishes and directions. This could be in an emergency, for example, where you cannot complete the ACD form or your instructions are urgent.

A non-written ACD must:

- include your name, residential address and date of birth
- include the date you gave the ACD
- be witnessed by two people who are eligible to be a witness, one of whom must be a registered health practitioner (see 'ACDs and witnesses' in this fact sheet)

For a verbal ACD, for example, you should give you directions in the company of your witnesses so that they are clear that it meets the requirements for making an ACD and truly reflects your wishes and preferences

If you do make a verbal ACD, please think about how health practitioners will know what your directions are in the future. You may wish to think about making a written ACD once the urgency passes.

You cannot register a non-written ACD with the Tasmanian Civil and Administrative Tribunal.

Dispute resolution

The Public Guardian

The Public Guardian can help resolve differences over ACDs. For example, they can:

- make sure everyone understands their rights and responsibilities in relation to the ACD
- make sure there is full and open discussion between everyone, to help identify and resolve the dispute
- suggest options so you do not need to go to the Tasmanian Civil and Administrative Tribunal for formal dispute resolution (however the Public Guardian or anyone involved in the dispute can decide the dispute is better handled by the Tribunal)

If everyone agrees on what should happen with your ACD, the Public Guardian will document the agreement and give a copy to the Tasmanian Civil and Administrative Tribunal to be included with your registered ACD.

The Tribunal

If the Tasmanian Civil and Administrative Tribunal considers a dispute, the Tribunal can legally cancel or change the ACD. The Tribunal can also make decisions in relation to the ACD, including:

- whether the person making the ACD did or did not have decision-making ability to make the ACD
- whether the ACD is valid
- whether a person has authority to make a decision in relation to the ACD

Other people who can help you

Other people can make decisions on your behalf if you lose the ability to make and communicate decisions yourself. These roles are explained below.

Person responsible

If you lose the capacity to make decisions about your health care or treatment, your guardian, spouse, unpaid carer, or close friend or relative (in that order) may consent to medical treatment on your behalf. This person is known as the *person responsible*.

They should know your values, wishes and health care preferences. Ideally, this information is included in your ACD.

A person responsible cannot make decisions about your money or property/estate.

Enduring guardian

You can appoint an enduring guardian to:

- consent to or make decisions about your health care and treatment, if you lose the ability to make or communicate these decisions yourself due to injury or illness
- make other personal decisions such as where you should live and what support services you should receive

You can only appoint an enduring guardian:

- if you have the capacity to understand the consequences of having an enduring guardian.
- by completing the [Appointing Enduring Guardian](#) form (www.tascat.tas.gov.au/guardianship) and registering this form with the Tasmanian Civil and Administrative Tribunal

When your enduring guardian accepts the role, they must also confirm that they have obtained a copy of your ACD if you have made one and understand it.

Guardian

In some circumstances, the Tasmanian Civil and Administrative Tribunal may appoint a guardian to make decisions on your behalf for matters such as health care and your place of care. The guardian may be the Public Guardian or anyone else the Tribunal thinks is eligible.

If the guardian is authorised to provide, refuse or withdraw consent to treatment on your behalf, they must take into account instructions provided in your ACD.

A guardian cannot make decisions about your money or property.

For money and property matters

Your ACD cannot give directions about your financial or property matters. For these, you may want to:

- appoint an enduring power of attorney to manage your finances or property if you lose capacity
- make a will to manage your estate after death

You should think about getting legal advice to appoint an enduring power of attorney or to make a will.

More information

For more information on Advance Care Planning, please refer to:

- [Advance Care Planning Australia](http://www.advancecareplanning.org.au) (www.advancecareplanning.org.au)
- [Dying to Talk](http://dyingtotalk.org.au/aboriginal-torres-strait-islander-discussion-starter/) (dyingtotalk.org.au/aboriginal-torres-strait-islander-discussion-starter/)
- [Palliative Care Tasmania](http://www.pallcasetas.org.au) (www.pallcasetas.org.au)
- [Tasmanian Civil and Administrative Tribunal](#) – Protective Division – Guardianship Stream (www.tascat.tas.gov.au/guardianship)
- [Office of the Public Guardian \(Tasmania\)](http://www.publicguardian.tas.gov.au) (www.publicguardian.tas.gov.au)