

## HEALTH PRACTITIONERS

ADVANCE  
CARE  
PLANNING

For HEALTH PRACTITIONERS in Tasmania

**What is Advance Care Planning?**

Advance care planning is an ongoing conversation that enables a person to express their decisions and wishes for support, levels of treatment and acceptable health outcomes for a later point in time when they may not be able to make and communicate decisions for themselves.

**What is an Advance Care Directive (ACD)?**

In Tasmania, an individual can create a legal document of their wishes, values, and preferences for care through an Advance Care Directive. An Advance Care Directive allows you to set out, or guide, what health care and treatment you wish to receive in the future if you lose the ability to make and communicate such preferences and decisions yourself.

**ACD Legislation Updates**

On the 21st of November 2022, changes to the Guardianship and Administration Act 1995 (the Act) commenced, providing a legal framework in Tasmania for making and registering ACDs. It is important to note that ACDs made before the legislation was introduced remain valid under common law.

**Who can make an ACD?**

Any person can make an ACD (including those who are under 18 years) so long as legislative requirements are met. A person may give an ACD in writing, verbally, or by any other means that enables the directions of care, preferences and values of the person giving the ACD to be documented.

**Who is the 'Person Responsible'?**

If a person no longer has decision-making ability, a 'person responsible' or substitute decision-maker (SDM) can make health care choices on their behalf. If healthcare choices are recorded on an ACD, this will instruct the SDM on what choices to make. If healthcare choices have not been recorded, the SDM will make the decisions.

The legal hierarchy for a SDM is:

- Enduring Guardian or Guardian
- Spouse
- Unpaid Carer
- Close Friend/Relative

(Guardianship and Administration Act 1995 4(c))

**What is an Enduring Guardian?**

An enduring guardian is a person you legally appoint to make decisions about your personal circumstances if you lost the ability to make these decisions yourself. Your enduring guardianship instrument must be registered to be valid. The form is lodged at Service Tasmania and TASCAT will register the document.

**Is a Doctor required to complete an ACD?**

It is recommended that patients discuss their future health concerns and treatments with their doctor or another health practitioner. However, a doctor is not required to witness an ACD unless the written ACD is given by a young person, or if the person is unable to give a written ACD. See next page.

**Conversation Triggers:**

- If the patient is diagnosed with a life-limiting illness.
- If the patient has a carer.
- If the patient is at a key point in their illness trajectory (recent unplanned hospital admission, change in medications, commenced home oxygen).
- If the patient has an increase in care needs/services.
- If the patient or family has raised the advance care planning conversation.
- If the patient is aged 75 years or older or is 55 years old and is an Aboriginal or Torres Strait Islander person.
- If the patient is at risk of losing decision-making ability (dementia & other neurodegenerative diseases).
- If the patient has been given a new significant diagnosis (metastatic cancer, renal or cardiac failure, lung disease).
- If the patient is living alone, has no family, is isolated, homeless, or living in rural or remote regions.
- If the patient is living in or preparing to move into a RACF or receiving community nursing/care.
- If the patient does not have a substitute decision-maker.
- If you answer 'No' to the surprise question 'would I be surprised if this person died within the next 12 months?'
- It is appropriate for anyone of any age to have an ACD that records their choices for the care they would prefer to receive if they were unable to speak for themselves in the case of a sudden event or accident.

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**Witnessing an ACD as a Health Practitioner**

You cannot be a witness if your position in a hospital, hospice, residential aged care home or other facility where the person resides has a direct or indirect ability to control or influence care and management at that facility.

If the person is under 18 years of age, or unable to give a written ACD, one of the witnesses must be a registered health practitioner.

**What is done with the completed ACD?**

- Keep the original with the patient in an easily accessible place.
- Encourage the patient to provide a copy to important people (enduring guardian, GP, local hospital, health care team).
- Upload a copy to My Health Record through MyGov.
- Register the ACD with the Tasmanian Civil and Administrative Tribunal (TASCAT).
- Review the ACD regularly as part of routine care or when circumstances change.

**The Advance Care Directive only comes into effect when the person no longer has decision-making ability.**

**How do I know if a person has an active ACD?**

Health care practitioners are required to make reasonable enquires to determine whether an ACD has been completed. This can include the following:

- Ask the person or their substitute decision-maker.
- Check 'My Health Record'.
- Contact the persons regular health practitioner.
- Contact TASCAT (currently this is only available during business hours).

**Further Education and Training:**

- End of Life Law for Clinicians
- Advance Care Planning Australia

PCT offer Free Education for all GP's and health practitioners to upskill and support further development on advance care planning that can be tailored to the needs of the specific organisation supported through Government funding.

Visit PalliHub.org.au to stay up to date with the latest training and education in palliative care and advance care planning.

**Further Information:**

- Guardianship and Administration Act (1995)
- [www.advancecareplanning.org.au](http://www.advancecareplanning.org.au)
- [www.pallcaretas.org.au](http://www.pallcaretas.org.au)
- [www.palliativecare.org.au](http://www.palliativecare.org.au)
- [www.health.tas.gov.au](http://www.health.tas.gov.au)
- [www.tascat.tas.gov.au](http://www.tascat.tas.gov.au)

**Legalities of an ACD**

A legally binding ACD must be followed by a clinician. Not doing so could lead to criminal or civil liability. There are some situations when an Advance Care Directive does not need to be followed.

- Where there is reasonable belief that the person did not intend the provision to apply to the circumstances at hand.
- Where the instructions contain a request for a particular kind of healthcare.
- Where providing the healthcare would be futile
- Where the healthcare is urgent and care is provided to save a person's life, prevent harm, or prevent suffering.
- When the practitioner has a conscientious objection to providing the care.

**Binding and Non-Binding Directives**

ACDs can contain both binding and non-binding directives. Clear and unambiguous instructions, including refusal of care or withdrawing care are binding. All other directives are non-binding but must be complied with to the extent that is reasonable to do so.

**Liability Protection**

A healthcare provider, person responsible, or anyone else who gives effect to an Advance Care Directive is protected from liability if their action was taken in good faith and without negligence.

**Registering an ACD**

There is no mandatory requirement to register an ACD. An ACD made in accordance with the Act will be valid even if it is not registered with the Tribunal. Older versions of the Tasmanian ACD are still valid.

Your patient can register their ACD through the Tasmanian Civil & Administrative Tribunal (TASCAT).

For further information please visit their website: [tascat.tas.gov.au](http://tascat.tas.gov.au)

It is FREE to register.

**Expiry Date of an ACD**

In some circumstances, a person may wish to make an ACD that only applies for a limited period of time however this is not essential. An expiry date might be used if the person making an ACD wishes the directives to apply to a specific course of treatment or a specific surgery.

**Revoking an ACD**

A person may revoke an ACD at any time if they have decision-making ability and understand the consequences of revoking the ACD. If the ACD is registered with the Tribunal, the person must complete and lodge the Notice of Revocation of a Registered ACD Form with the Tribunal. A person may not vary a registered ACD.

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