



## What is an Advance Care Directive?

**Author:** [Lauren Weatherley](#)

**Email:** [lauren@ealawyers.com.au](mailto:lauren@ealawyers.com.au)

**Date:** Monday February 6, 2023

An Advance Care Directive is a document which outlines your wishes or directions regarding your future health care for various medical conditions. The document will only come into effect if you are unable to make your own decisions. An Advance Care Directive ensures that, should you be unable to make your own decisions, your Guardian knows what your wishes are for your medical care.

## Who can make an Advance Care Directive?

Anyone over the age of 18 years can make an Advance Care Directive if they are capable of understanding the directions they are making and their effect.

## Is an Advance Care Direct legally binding?

An Advance Care Directive is legally binding in New South Wales. Making the decision to accept or refuse recommended health care is the legal right of an adult. An Advance Care Directive ensures that if you are unable to make those decisions, the person you have appointed can make them on your behalf.

## What directions can be made in an Advance Care Directive?

Advance Care Directives can be far-reaching. You can make directions for various different health situations, outlining what form of care you would like in each. For example, you can make directions as to whether or not you want assisted ventilation or antibiotics if you are in a terminal phase of an incurable illness.

Another example of the kinds of directions that can be made relates to the care or treatment you would or would not choose to receive if you resided in a residential aged care facility.

While the directions that you can make are far-reaching, a direction for euthanasia would not be followed by any medical practitioners due to it being a breach of law and a criminal offence in NSW.

This is still the case even when the *Voluntary Assisted Dying Act 2022* comes into effect in 2023 (in NSW) as, in accordance with the Act, a person needs to be capable of making that decision at the time and cannot rely on an Advance Care Directive to make that decision for circumstances which may exist in the future.

## Who makes the decisions under an Advance Care Directive?

It is preferable to make an Appointment of Guardian with an Advance Care Directive in that document. This ensures that your Advance Care Directive will be followed by the person you have appointed as your Guardian.

You can make an Advance Care Directive separate from your Appointment of Guardian. This is suitable for younger people, allowing you to update the Advance Care Directive regularly without having to update your Appointment of Guardian. An Appointment of Guardian needs to be signed by both you and your appointed Guardian, and both signatures must be witnessed by a lawyer. Unlike [your Will](#), they do not need to be witnessed at the same time, although it may often be convenient to all witness at the same time.

There is no doubt, however, that having your Advance Care Directive within your Appointment of Guardian has some benefit. This way, both your directions and the information regarding who is to make decisions on your behalf are contained within one document.

## Can an Advance Care Directive be revoked or changed?

Yes.

Your Advance Care Directive can be changed or revoked at any time while you are mentally capable of doing so. It is wise to review and update your Advance Care Directive every few years, particularly if you have a change to your health.

## Who should I discuss my Advance Care Directive with?

You should discuss your Advance Care Directive with your doctor and family and/or close friends.

There is a benefit to discussing your Advance Care Directive with your doctor while you are considering it. At E&A Lawyers, we have an Advance Care Directive Checklist for you to complete with your directions. We recommend that you discuss this checklist with your doctor if you are unsure about any medical terminology.

[Contact us for your checklist: 02 9997 2111](#)

You should also discuss your Advance Care Directive with your family and/or close friends so that they are aware of the document and your wishes.

## What to do with your Advance Care Directive once signed

Once you have signed your Advance Care Directive, you should keep it in a safe place. We can store the document in our safe custody, along with any other documents you have that should be safely stored (for example, Wills, Power of Attorney). This service is free of charge.

A copy of your Advance Care Directive should also be provided to your doctor, your family and the person you have appointed as [your Enduring Guardian](#).

If you are admitted to a hospital or a residential aged care facility, they should also be provided with a copy. In doing so, make sure to ask the hospital staff that they ensure your Advance Care Directive is noted on your admission form and added to your medical records.

## Get help from a Wills and Estates lawyer

An Advance Care Directive is an important document to have in place and continuously update. E&A Lawyers can assist you in preparing your Advance Care Directive, either on its own or together with your Appointment of Guardian.

### Contacting a family lawyer

For more information or to arrange a consultation with a lawyer, you can call or email us.

[02 9997 2111](tel:0299972111)

[info@ealawyers.com.au](mailto:info@ealawyers.com.au)

---

*This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact E&A Lawyers.*