

# Advance personal plans and adult guardianship

## In this fact sheet

This fact sheet overviews advance personal planning and adult guardianship in the Northern Territory. It explains:

What advance personal planning is	Advance consent decisions, advance care statements and substitute decision-makers
How it relates to adult guardianship	Impact on guardianship orders, enduring powers of attorney and decision-making

## What is advance personal planning?

Advance personal planning allows a person to plan for a future where their health, financial and lifestyle wishes are heard and respected.

It is governed by the *Advance Personal Planning Act 2013*.

### Advance personal plans

An advance personal plan is the legal document that records an adult's personal and financial preferences in case they lose decision-making capacity in the future. It does not replace their will and is only valid in their lifetime.

An advance personal plan:

- states how you want your personal and financial matters dealt with in the future
- does not replace your will
- only takes effect when you lose decision-making capacity
- can be cancelled ('revoked') or amended at any time if you have the legal capacity to do so.

Advance personal planning replaces enduring power of attorney in the Northern Territory.

- i** An enduring power of attorney can no longer be created in the Northern Territory. But existing enduring powers are still valid, as are interstate powers.

A plan can have all or some of the following:

- an advance consent decision
- an advance care statement
- appointment of a substitute decision-maker.

### Advance consent decisions

An advance consent decision allows you to control the extent and type of medical treatment you receive in the future, if you are not able to make a decision for yourself.

Advance consent decisions are legally binding, which means that doctors, guardians and other decision-makers must follow them.

### Advance care statements

An advance care statement sets out your personal views, wishes and beliefs as the basis for how you want someone to act if they make decisions for you in the future.

Unlike an advance consent decision, a statement does not dictate what actions decision-makers must take, but it will give them general guidance. What you include is up to you.

However, like advance consent decisions, if you have decision-making capacity and are able to do so, you can:

- instruct your guardian or other decision-makers not to action your statement
- withdraw or amend your statement at any time.

## Substitute decision-makers

A substitute decision-maker is an adult who can make decisions on your behalf when you cannot do so yourself. This might be a partner, parent, adult child, close relative, friend or other trusted person.

You can appoint different decision-makers for different decisions in your advance care statement. The important thing is that you trust them to act in your best interests.

## What about guardianship and enduring powers of attorney?

### What the NTCAT does

The NTCAT can appoint a guardian to make certain decisions for an adult with impaired decision-making capacity if it is satisfied this is needed.

If you have an advance personal plan or have given someone an enduring power of attorney, the Northern Territory Civil and Administrative Tribunal (NTCAT) must take this into account when deciding:

- whether you need a guardian
- whether it should make a guardianship order
- what terms the guardianship order should include, if you do need one.

The NTCAT must not make a guardianship order that gives the guardian authority for a matter if someone else already has that authority under an advance personal plan or enduring power of attorney.

The NTCAT is also the only body with authority to change or revoke an advance personal plan, apart from the adult who made it.

### What guardians must do

Any decision-maker appointed under the *Advance Personal Planning Act 2013*, and any guardian appointed under the *Guardianship of Adults Act 2016*, will be bound by your advance consent decisions or advance care statements.

This is to ensure your decisions, beliefs, views and wishes are honoured if your decision-making capacity is impaired.

If you have an advance care statement and a guardian is appointed, your guardian must use their authority to give effect to your statement, even if it is not in your best interests.

 A decision-maker can be excused from giving effect to a statement in limited circumstances. Please see section 23 of the *Advance Personal Planning Act*.

### What if the NTCAT doesn't know about the advance personal plan?

If the NTCAT doesn't know about an advance personal plan or enduring power of attorney when it makes a guardianship order, the order's validity will be in question.

As soon as practicable after a guardian or the Public Guardian becomes aware that an advance personal plan or enduring power of attorney exists, they must apply to the NTCAT to have the guardianship order reassessed.

 Please see section 52 of the *Guardianship of Adults Act* to learn more.

## Important documents

- *Guardianship of Adults Act 2016*
- *Advance Personal Planning Act 2013*
- *Powers of Attorney Act 1992*
- our *Understanding guardianship* guide

If you have any questions, please contact us:



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