Office of the Public Advocate

If you can't make your own decisions, who will make them for you?

You can decide:

- What medical treatment you have by making an **advance health directive**.
- Who will make your lifestyle and medical treatment decisions by making an **enduring power of guardianship**.
- Who will help you and make decisions about your money by making an **enduring power of attorney**.

These are ways that you can plan for your future.

Why do I need to plan ahead?

Everyone hopes that they will stay healthy and well and will not need any help.

When you are well – mentally and physically – you make your own decisions and look after yourself. When you can do this you have full capacity.

But sometimes something can happen to your brain – you could have an accident or get sick and not be able to make your own decisions.

If this happens, you have lost capacity and someone else might need to make decisions for you.

If you plan ahead you can choose the person who will make decisions for you if, for any reason, you are not able to make them for yourself in the future.

Government of **Western Australia**
Department of **Justice**

How could I lose capacity?

There are many reasons why you could lose capacity to make decisions for yourself, including:

- dementia (a disease of the brain)
- acquired brain injury (a result of a fall or car accident)
- substance related brain damage (a result of using too many drugs or drinking too much alcohol)
- mental illness (an illness of the brain like depression or schizophrenia)
- intellectual disability (usually from birth, for example Down's Syndrome or foetal alcohol syndrome).

If you lose capacity, you may be told you have a decision-making disability.

What does it mean to have a decision-making disability?

Having a decision-making disability means that you can't understand what the doctor or health worker or others are telling you about your situation and the different choices that you could make.

I want to plan ahead – what can I do?

There are three ways that you can plan ahead, and choose how your decisions will be made if you lose capacity to make decisions for yourself in the future.

1. An advance health directive

In this document you can write down your decisions about treatment and other health care. You can decide now what medical treatment you do or do not want to be given if you lose capacity.

Talk to your doctor or health worker about your views and wishes. Your doctor or health worker can help you write down what treatment you do or do not want to be given in the future.

These instructions in your advance health directive will be followed by the doctor or health worker if you can't make the decision for yourself – so this is a way to make sure your wishes about treatment are followed.

2. An enduring power of guardianship

In this document you can name the person who you choose to make decisions about your lifestyle and medical treatment if you lose capacity.

The person you choose to appoint as your decision-maker is called an **enduring guardian**. They are only allowed to make decisions if you lose capacity.

Your enduring guardian can make decisions about:

- where you live, and who you live with



- medical, dental and other health treatment



- services



- contact with others.



3. An enduring power of attorney

In this document you can name the person who you choose to make decisions about your finances. The person you choose to appoint as your decision-maker is called an attorney.

It is up to you to decide when your attorney can help you with your finances and money matters. You can give them the authority to start helping you immediately, or only to make financial decisions for you if you ever lose capacity.

If they start helping you while you still have capacity, you will tell them what to do. This can be useful if you find it hard to go to the bank to pay bills.

Your attorney can make decisions about:

- pension



- everyday expenses and bills



- sale or lease of property.



What are the rules for making these documents?

When you complete these documents to plan for the future you must:

- be at least 18 years of age
- have full capacity when the document is signed by you
- use the right form – the forms are available from the websites listed at the end of this brochure
- sign the form, and two people must witness your signature.

One of the people who watches you sign the form must be an authorised witness, such as your doctor or bank manager. There is a list of people authorised to witness your signature on the Office of the Public Advocate's website: www.publicadvocate.wa.gov.au

Who do I tell about the plans I have made?

If you decide to make any of these documents to plan for the future it is up to you who you tell.

It may be a good idea to talk to your family and friends about your plans.

This will mean everyone knows about your choices and understands what you want to happen if you lose capacity and can't make your own decisions in the future.

Do I have to fill in these documents?

No – it is up to you to decide if you want to use any of them to help plan for the future.

No one can force you to fill them in.

If you are worried because someone is forcing you to fill them in when you do not want to, you should talk to someone you trust who can help you say 'no' to that person.

If I don't want to make these documents, how will decisions about my health and medical treatment be made if I can't make them for myself?

If you are not able to make decisions for yourself and you need treatment, the doctor will ask someone on the list of decision-makers to make the decision about your treatment. This list is set out opposite.

The doctor will get the decision from the first person on the list who is at least 18 years old, has full capacity and who is willing and available to make the decision. This list is called the 'Hierarchy of decision makers'.

What happens if I need urgent treatment and no one is around to talk to the doctor?

If you need urgent treatment to save your life or prevent you being in pain, the doctor can treat you without speaking to family or friends.

After this the doctor will need to find someone who can make a decision about any non-urgent treatment that you need. The doctor will get the decision from the first person on the list below.

Hierarchy of decision makers

Advance Health Directive
Decisions must be made in accordance with the AHD unless circumstances have changed or could not have been foreseen by the maker.

↓

Enduring Guardian with authority

↓

Guardian with authority

↓

Spouse or de facto partner

↓

Adult son or daughter

↓

Parent

↓

Sibling (a brother or sister)

↓

Primary unpaid caregiver

↓

Other person with close personal relationship

Where an Advance Health Directive (AHD) does not exist or does not cover the treatment decision required, the health professional must obtain a decision for non-urgent treatment from the first person in the hierarchy who is 18 years of age or older, has full legal capacity and is willing and available to make a decision.

What happens if I have looked at the list and I do not think that the person the doctor or health worker should contact is the person I want to make treatment decisions for me? What can I do?

It is possible that the person the doctor or health worker should contact is not the person you want to make treatment decisions for you. This could be for different reasons such as:

It is not the way it works in your culture or family – For example, the person the doctor should contact as stated on the list is your daughter, but culturally your brother should make decisions for you if you are not able to make them for yourself.

Someone else knows more about you – For example, the person the doctor should contact as stated on the list is your daughter, but you have not seen her for a long time and your friends know you better.

The person on the list does not have the same views and opinions as you do about medical treatment – For example, the person the doctor should contact as stated on the list does not agree with doctors giving a blood transfusion, but you know you would want this if it was needed.

If you think the list (called the 'Hierarchy of decision makers') means the doctor will not talk to the right person, this is a good reason for you to think about making an **enduring power of guardianship** because you can:

- Choose who you want to make decisions about your lifestyle and medical treatment – and give them legal authority to be your decision-maker.
- Make sure that person is the right person to talk to in your family or culture.
- Make sure your family and your doctors know who you have chosen to make decisions about your lifestyle and treatment for your health.

Where can I get help and more information about these three ways to plan for the future?

The Department of Health

The Department of Health can provide information and a booklet on the advance health directive.

The booklet and form can also be downloaded from the website:
www.healthywa.wa.gov.au/advancecareplanning

T: 9222 2300

E: acp@health.wa.gov.au

The Office of the Public Advocate

The Office of the Public Advocate can provide information on the enduring power of guardianship and enduring power of attorney.

The enduring power of guardianship and the enduring power of attorney booklets and forms can be downloaded from the website:
www.publicadvocate.wa.gov.au

T: 1300 858 455

E: opa@justice.wa.gov.au

This document can be made available in alternative formats on request.

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