

Who will speak for you if you can't speak for yourself?

A guide for choosing a substitute decision-maker for healthcare decisions



What is advance care planning?

Advance care planning is about your future health and personal care. It gives you the opportunity to plan for what you would want, if you were unable to say it yourself. This guide is about choosing someone to make decisions for you in case you couldn't speak for yourself.

Your substitute decision-maker

If you lose the ability to make decisions about your health care – either because of an accident, sudden illness or a progressive illness – the treating doctors and health care team will need to ask someone else to make decisions for you. This person is called a 'substitute decision-maker'.

There are laws in each state and territory setting out a priority order of substitute decision-makers. The treating doctors will need to interpret these laws to work out who would be your substitute decision-maker. However, you can appoint a different person if you want to, to ensure that the person you would select has the authority to make decisions on your behalf. This person does not have to be a family member.

'Identifying and appointing someone who will make decisions on your behalf, is an important part of planning ahead.'

Persons identified in state or territory laws to be your substitute decision-maker

The laws that decide who will be your substitute decision-maker vary across the states and territories of Australia. The first person on the list in all states and territories is someone you have legally appointed. After that, the list involves certain types of people.

For example, the order in the list might be:

1. an appointed substitute decision-maker
2. a spouse
3. an unpaid person who provides care and assistance
4. a close family member or friend

Specific information for your state or territory can be found at www.advancecareplanning.org.au

Is this the person you would have chosen for yourself?

In many cases, the person automatically identified as your decision-maker is the same person that you would have chosen yourself. But this is not always the case. The treating doctors might find it difficult to work out who to ask if you have multiple family members or close friends especially when decisions need to be made urgently. For example, you might want your daughter or neighbour as your substitute decision-maker but the hospital may contact your brother or sister during an emergency.

Legally appointing your decision-maker

If the person who may be contacted by the treating doctors to be your substitute decision-maker is different to the person you would choose, you can legally appoint your preferred person. That person will then have the authority to act on your behalf. Even if the person automatically identified as your decision-maker is the same person you would choose yourself, you may still want to legally appoint them if you would like them to be able to refuse medical treatments on your behalf. In most states and territories, only a legally appointed substitute-decision maker can refuse treatments.

Legally appointing your decision-maker can give you peace of mind as you will know decisions will be made by someone you trust and who you would want to make decisions for you.

It is important that you access information from your state or territory to ensure you have the correct forms for legally appointing your substitute decision maker. You also need to check any requirements for completing the form in your state or territory, including who can witness the signatures on the form. Further information is available from www.advancecareplanning.org.au

Things to consider when choosing a substitute decision-maker

This is a very important role and something you should consider carefully. Ideally, the person (or people) you choose:

- would be willing to speak on your behalf
- can separate their own feelings from yours
- is available (preferably living nearby)
- knows you well and understands what's important to you

- will talk with you now about sensitive issues, and listen and act on your preferences in the future
- will likely be around for some time into the future
- can confidently speak with health professionals and other family members about your preferences.

‘The most important consideration is to have someone you trust.’

How to appoint your substitute decision-maker

You will need to complete documents from your Australian state or territory. It is best to complete these while you are well as you need to be ‘legally competent’. Being competent means you are able to understand the document you are signing, and the implications of this.

A person appointed by you as your substitute decision-maker only takes on this role if you lose capacity to make your own decisions. In most states and territories, this person does not have the power to manage your financial affairs. If you want them to manage your financial affairs, you may need to appoint them separately to have that role.

In most states or territories, you can appoint more than one person. You can give them the power to act alone or together in making decisions. However, if they need to act together this can have implications if they don’t agree on a course of action.

It is recommended that you explain to others who may expect to have a say in your care:

- who you have nominated and why, and
- ask these people to support the person(s) you have appointed.

Supporting your substitute decision-maker

You can help your substitute decision-maker perform their role by:

- Checking that they are happy to do it. For example you could say “If I got really sick in the future and could not make my own decisions, would you work with my doctors and help make medical decisions for me?”
- Talking with them about your preferences for future care.
- Ensuring they have copies of any relevant documents, such as your *Advance Care Directive*.

- Thinking about how much flexibility you would want to give them in making decisions for you and make sure this is clear on your *Advance Care Directive* if you complete one. Flexibility gives your substitute decision-maker scope to work with your doctors and possibly change any prior medical decisions you have made. There may be some decisions that you are happy for your substitute decision-maker to change and other things you would never want them to change. Other people may be happy to give their substitute decision-maker total flexibility to work with their doctors if they got really sick and couldn't speak for themselves, rather than make medical decisions ahead of time.

For more information and assistance

- Talk to your local doctor
- Visit www.advancecareplanning.org.au for resources applicable to your state or territory
- Call Advance Care Planning Australia National Advisory Service: 1300 208 582

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