

Form 10

Powers of Attorney Act 1998 (section 161)
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Advance health directive explanatory guide (Queensland)

Your guide to completing an
Advance health directive (Queensland)

Read this guide before you begin filling in [Form 4 – Advance health directive](#). It provides detailed explanatory notes about the information required to complete the form. It also has a step-by-step guide to each section of your advance health directive form.

Forms and explanatory guides are available at www.qld.gov.au/guardianship-planahead



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Checklist for completing your advance health directive

Checklist items in **bold** must be completed for your advance health directive to be valid.

- Read [Form 4 — Advance health directive](#) to understand what kind of information you need.
- Read [Form 10 — Advance health directive explanatory guide](#) (this document).
- Talk to close family and friends about what is important to you.
- If you want to appoint an attorney(s) for health matters, consider who you want to appoint and talk to them about your wishes.
- Consider how making an advance health directive may impact any previous documents you have completed.
- Talk to your doctor who can explain the treatment options noted in the advance health directive.
- Complete the details in your advance health directive, either by hand or on a computer.**
- Your doctor must sign section 5 ‘Doctor certificate’.**
- Sign your advance health directive in the presence of an eligible witness (such as a justice of the peace (JP), commissioner for declarations or lawyer).**
- Have your eligible witness sign the form.**
- After your eligible witness has signed, have your attorney(s) (if appointed) sign section 8 ‘Attorney(s) acceptance’ of the original form.**
- Make certified copies (see pages 18–19 to find out how to do this).
- Keep the original in a safe place.
- Give certified copies to people who need to know about its contents (e.g. family, doctor etc.).
- Let your close family and friends know you have made an advance health directive.

About advance health directives

What is an advance health directive?

At some point in the future, you may be unable to make decisions about your health care and special health care, even temporarily. This might be due to an accident, dementia, a stroke or a mental illness.

An advance health directive lets you (the **'principal'**) give directions about your future health care. It allows your wishes to be known and gives health professionals direction about the treatment you want.

You can also use an advance health directive to appoint someone you trust to make decisions about your health care on your behalf. This person is called your **'attorney'** and you can appoint more than one if you choose. They don't need any legal experience to carry out this role.

Who can make an advance health directive?

To make an advance health directive, you must be at least 18 years old and have capacity to understand the document you are signing and the powers it gives. You must also be able to make your advance health directive freely and voluntarily. You must not be pressured into making it by someone else.

To find out more about capacity to make an advance health directive see the [Queensland Capacity Assessment Guidelines 2020](#).

When will my advance health directive be used?

Your advance health directive can be used only during times when you do not have capacity to make your own healthcare decisions. Having capacity to make a decision for a health care matter means that you are capable of:

- » understanding the nature and effect of decisions about the matter
- » freely and voluntarily making decisions about the matter
- » communicating the decisions in some way.

For more information about capacity to make a decision for a health care matter, refer to the [Queensland Capacity Assessment Guidelines 2020](#).

Preparing to make your advance health directive

Read through the advance health directive form and this guide carefully to see what kind of information you will need to complete it. You should also:

- » think about your views, wishes and preferences for your future health care — think carefully about what living well means to you now and what health outcomes and quality of life would, and would not, be acceptable for you into the future.
- » talk to your family and friends — discussions with your family and friends can be helpful. It is important that the people closest to you understand your preferences regarding your future health care.
- » talk to your doctor — it is strongly recommended that you discuss your advance health directive with your doctor before completing it. Your doctor will have access to your medical history and can help you understand how a particular illness may affect you. They can discuss treatment options and the effects of those treatments. A doctor must sign your advance health directive to confirm that you have capacity at the time of making it.

Health matters are a personal matter and relate to decisions about your health care. Health care includes most medical treatments, procedures and services to treat both physical and mental conditions. When you are nearing the end of your life, health care also includes treatments aimed at keeping you alive or delaying your death (life-sustaining treatments).

Special health matters relate to decisions about your special health care. Special health care includes special procedures such as removal of tissue for tissue donation to another person, sterilisation, termination of a pregnancy, participation in a special medical research, experimental health care, electroconvulsive therapy (ECT) or non-ablative neurosurgical procedure.

Instructions for completing your advance health directive form

A step-by-step guide through each section of [Form 4 – Advance health directive](#).

SECTION 1: YOUR PERSONAL DETAILS

You **must** fill in your full name, date of birth and address so you can be identified. Your phone number and email address are optional but recommended.

If you currently use, or have previously used, different legal names, or if your identification documents contain different names, please also indicate those other names here. Depending on your circumstances you may also need to complete a statutory declaration that you are one and the same person and keep it with this document—you may need to discuss this with the person who witnesses this document. It is not necessary to list nicknames.

A change in your address, phone number or email will not make your advance health directive invalid.

SECTION 2: YOUR HEALTH CONDITIONS AND CONCERNS

You are not required to fill in this section. You should cross it out if you do not want to complete it. If you do complete this section cross out any space in the box that you do not use.

You may want to list your major health conditions and concerns.

Examples

1. I have previously been diagnosed with breast cancer and there is a chance it may return.
2. I have a condition, macular degeneration, which means my eyesight will gradually get worse.

SECTION 3: YOUR VIEWS, WISHES AND PREFERENCES

You are not required to fill in this section. You should cross it out if you do not want to complete it. If you do complete this section cross out any space in the boxes that you do not use.

You are letting your attorney(s) and other people know about your views, wishes and preferences about your health care now and into the future in this section, but **you are not giving instructions**. An attorney (if you have appointed one) must also take your views, wishes and preferences into consideration when making healthcare decisions on your behalf. Section 4 allows you to make legally binding directions about your health care.

(a) These things are important to me:

What does living a good life mean for you? Think about what matters most to you and what is important for your quality of life now and into the future. What would you miss most if you couldn't continue to live as you do now?

Examples

1. My priority is spending as much time with my family and friends as possible. I don't mind where I live as long as I can continue to see and talk to the people close to me.
2. The most important thing to me is that I live in my own home.

(b) These things worry me about my future:

What possible health outcomes would be unacceptable for you? Talk to your doctor about your concerns. Think about when you would want your health care to focus on allowing a natural death, rather than continuing treatment aimed at keeping you alive.

 **Examples**

1. My life would be unacceptable if I can no longer recognise my family and friends.
2. It would be okay to be on a breathing machine for a short time, but if I required it indefinitely to keep me alive, I would not like to live like this.

(c) These are the cultural, religious or spiritual values, rituals or beliefs I would like considered in my health care:

 **Examples**

1. I am (of this religious domination) and when I am nearing death I want the following to occur: _____.
2. It is important to my culture, which is _____, that the usual customs of my culture are respected, which include _____.

(d) When I am nearing death, the following would be important to me and would comfort me:

What would you like to happen as you are nearing death? You may wish to spend your last days at home, or you may prefer to be in a hospital. You might want certain people to be close by.

 **Examples**

1. I would prefer to die with my husband and my children close by.
2. I have always loved the song _____ and would like it to be played to me.
3. My preference is to die at home.

(e) I would prefer these people to be involved in discussions about my health care:

Among your family and friends, who would you like consulted about your health care? Your health providers or attorney(s) (if you have appointed one) may want to talk to your family and friends to understand more about your views, wishes and preferences for health care. Nominate people who you know will respect your wishes.

 **Examples**

1. My regular GP is Dr _____ who has been familiar with my condition for years. I would like my regular GP to be consulted before any major decisions are made regarding my health care.
2. My daughter _____ and I have spent a long time discussing my wishes for health care. I would be comfortable if you spoke to her.

(f) I would prefer these people not be involved in discussions about my health care:

Relationships can become complicated or strained. Although you are close to someone, you may not trust that person to make a decision you would agree with. Nominate people here who you do not wish to be involved in decisions about your health care, or particular aspects of your health care.

 **Examples**

1. I do not want my sister to be involved in decisions around my health care.
2. Although I love and respect my father, we do not share the same beliefs. Therefore, he should not be consulted around my healthcare decisions.

SECTION 4: YOUR DIRECTIONS

You can make legally-binding directions about your future health care in this section. It is strongly recommended that you first discuss your directions with your doctor. Only give directions if you fully understand the treatment options you refer to and whether you want them or not.

This section is divided into three parts:

- » directions about life-sustaining treatment
- » directions about other health care
- » directions about blood transfusions.

DIRECTIONS ABOUT LIFE-SUSTAINING TREATMENT

This part is focused on health care when you are nearing the end of your life. It allows you to give directions about life-sustaining treatments.

Think about the answers to the questions in section 3 'Views, wishes and preferences'. You should also discuss these options with your doctor who can provide expert advice.

What is life-sustaining treatment?

When you are nearing the end of your life, life-sustaining treatment is health care aimed at sustaining or prolonging your life. Some examples of life-sustaining treatment include:

- » CPR (cardiopulmonary resuscitation)
- » assisted ventilation (e.g. a machine which assists your breathing through a face mask or a breathing tube)
- » artificial nutrition (e.g. a feeding tube through the nose or stomach).

Will my health provider always need to follow my directions?

Your directions about life-sustaining treatment will only apply if you are unlikely to regain capacity to make your own decisions about health care and one of the following applies:

- » you are so unwell due to a terminal illness or condition that, in the opinion of two doctors, you are reasonably likely to die in the next 12 months
- » you are so unwell due to an injury or illness that there is no reasonable prospect that you will recover to the extent that you can live without life-sustaining treatment
- » you are permanently unconscious (with no reasonable prospect of regaining consciousness)
- » you are in a persistent vegetative state (involving severe and irreversible brain damage).

A health provider does not have to follow directions in an advance health directive that are not consistent with good medical practice or that will not benefit you. A health provider also does not have to follow directions that are uncertain or where circumstances, including advances in medicine, have changed to the point that your directions are no longer appropriate.


What options are provided?

There are four options in this part of the advance health directive. **You can only choose one option.** Read all four options before making a decision.

The four options are:

1. **I consent to all treatments aimed at sustaining or prolonging my life:** this means that in most cases your health provider must provide you with treatments aimed at keeping you alive or delaying your death.
2. **I refuse any treatments aimed at sustaining or prolonging my life:** this means that in most cases your health provider **must not** provide you with treatments aimed at keeping you alive or delaying your death.
3. **I cannot decide at this point. I want my attorney(s) to make decisions about life-sustaining treatment on my behalf at the time the decision needs to be made using the information in this advance health directive and in consultation with my health providers and the people I have listed in section 3:** this means your attorney(s) will make decisions about your treatments to sustain or prolong your life.
4. **I give the following specific directions about life-sustaining treatment:** if you tick this option you can **give different directions** about different types of life-sustaining treatment. If you tick option (4)(c) for any of these treatments, you must specify the circumstances in which you would consent to the treatment.

Whatever option you choose, your health providers will focus on keeping you as comfortable as possible when you are nearing the end of your life, including providing treatments that minimise pain, even if you choose to refuse all life-sustaining treatment.

 **NOTE:** See ‘Will my health provider always need to follow my directions?’ on page 7 to understand when your health provider must follow your directions.

Example

Marge’s story

Marge has been previously treated for breast cancer. She has just been told that her cancer has returned and her doctor has said that this time treatment is very unlikely to prolong her life beyond six months. Marge’s mother had breast cancer and Marge has strong feelings about the treatments that she received that prolonged her life and her suffering. Marge has decided that this time she does not want any more treatment that would delay her death and wants her health care to focus on keeping her as comfortable and as pain-free as possible.

Marge chooses:

Option 2



I **refuse** any treatments aimed at sustaining or prolonging my life.

Example

Ali’s story

Ali has been diagnosed with emphysema (a chronic disease of the lungs). He is 70 years old and knows his condition will only worsen. While he feels he would still have a good quality of life living at home, even if this meant using oxygen, he wouldn’t want to be permanently placed on a breathing machine in a nursing home or hospital.

Ali chooses:

Option 4



I give the following specific directions about life-sustaining treatment. He ticks box (c) for assisted ventilation and provides the following details:

Only if temporary and if I could then return home, even with oxygen. I do not want to permanently be on a breathing machine in hospital or at a nursing home.

He ticks box (b) for all the other treatments — refusing all other life-sustaining treatments.


DIRECTIONS ABOUT OTHER HEALTH CARE

Give directions about health care and special health care, other than life-sustaining treatments.

Health care includes most medical treatments, procedures and services to treat both physical and mental conditions. You can specify a particular health condition (e.g. high cholesterol) and provide directions about health care but you do not have to do this. Your directions, however, must be **clear**.

Special health care includes special procedures such as:

- » removal of tissue for tissue donation to another person
- » sterilisation
- » termination of a pregnancy
- » participation in special medical research
- » experimental health care
- » electroconvulsive therapy (ECT)
- » non-ablative neurosurgical procedure.

 **NOTE:** You can consent to receiving electroconvulsive therapy (ECT) under your advance health directive. Before you consent to this treatment, it is very important that you discuss the treatment with your doctor. You can also state in your advance health directive that you do not wish to consent to ECT.

Examples

Health condition	Directions about my health care
High cholesterol	Do not give me _____ medication. It causes the most side effects.
N/A	I am willing to participate in medical research or experimental health care if there is a chance it would benefit any condition I have.

DIRECTIONS ABOUT BLOOD TRANSFUSIONS

Consent to, or refuse a blood transfusion in this part. You can specify the circumstances in which you would consent to a blood transfusion or list specific types of transfusions you consent to or refuse. A blood transfusion is the transfer of blood, including blood products (e.g. red cells, platelets and plasma) from one person to another. If you tick 'other' you can specify the circumstances or types of transfusions that you consent to or refuse (e.g. 'I consent to a transfusion of blood products but not blood').


SECTION 5: DOCTOR CERTIFICATE

A doctor must complete, sign and date this section before you and the witness sign section 7 'Declarations and signatures' of the advance health directive form. After your doctor signs, you must sign section 7 in front of an eligible witness (a person other than the doctor) as soon as possible (see section 7 'Declarations and signatures' of this guide).

While your eligible witness does not need to sign the form in front of the doctor, if you and the witness sign the advance health directive as soon as possible after the doctor signs the doctor certificate, this helps confirm your capacity to make the advance health directive.

It may also reduce the chances of others questioning your capacity to make an advance health directive.

 **NOTE:** Your doctor should read 'Information for the doctor' on page 20.

 **NOTE:** A doctor referred to in this document must be a medical practitioner registered under the Health Practitioner Regulation National Law to practice in the medical profession, other than as a student. For example, your GP or a doctor at a hospital will be able to complete and sign section 5 of your advance health directive.

SECTION 6: APPOINTING AN ATTORNEY(S) FOR HEALTH MATTERS

You are not required to fill in this section. You should cross it out if you do not want to complete it.

Only complete section 6 if you want to appoint an attorney(s) for health matters or you have already appointed one in an enduring power of attorney and you want to change it.

What is an attorney for health matters?

You can use your advance health directive to appoint someone you trust to make decisions about your health care on your behalf. This person is called your **‘attorney’** and you can appoint more than one if you choose. They don’t need any legal experience to carry out this role.

There are benefits in appointing an attorney:

- » you will have someone you trust with the legal authority to make health decisions for you
- » it may avoid family conflict by making it clear who you want to make decisions for you
- » you can make sure the person making decisions for you is culturally appropriate and understands your views, wishes and preferences about health care.

An attorney can only make decisions about your health care at a time when you do not have capacity to make decisions about health care yourself. An attorney cannot make decisions that would be inconsistent with directions you have made about your health care in section 4 ‘Your directions’ of your advance health directive.

When making decisions for you, your attorney must respect your views, wishes and preferences (including those in section 3). Your attorney can make decisions about health care, including life-sustaining treatment, but they cannot make decisions about **‘special health care’**.

What if I have already appointed an attorney in an enduring power of attorney?

If you have already appointed an attorney for personal or health matters by filling out a different form (e.g. an enduring power of attorney) then you do not have to complete this section, unless you wish to change your attorney(s) or the decision-making power of your attorney(s).

If you have already appointed an attorney(s) for personal (including health) matters in an enduring power of attorney and you appoint an attorney(s) for health matters in a later advance health directive (which may include one made in another state or territory), the later document will revoke the earlier document to the extent of any inconsistency. This means the matter may only be dealt with by the attorney(s) appointed for the matter in your most recent document.

 **NOTE:** Your attorney(s) should read ‘Information for attorneys’ on pages 22–24.

WHO ARE YOU APPOINTING AS YOUR ATTORNEY(S) FOR HEALTH MATTERS?

If you are appointing an attorney(s) for health matters, you must fill in their name and address. As your attorney(s) may need to be contacted at short notice you should also include their phone number and email address.

To be eligible to be an attorney a person must:

- » have capacity to make healthcare decisions
- » be 18 years or older
- » not be your paid carer or your health provider
- » not be a service provider for a residential service where you live.

NOTE:

A **paid carer** is someone who is paid a fee or wage to care for a person but not someone receiving a carer's pension or benefit.

A person who is living with you and receives a carer's allowance from the government can be your attorney. A health provider, such as a nurse or medical practitioner who provides care for you, cannot be your attorney.

A **residential service** is rooming accommodation regulated under the [Residential Services \(Accreditation\) Act 2002](#). A residential service is sometimes called a boarding house.

Who should you choose as your attorney(s)?

You should choose your attorney(s) for health matters carefully. Your attorney(s) should be someone that:

- » you trust to make decisions you would agree with about your health care
- » you have discussed your views, wishes and preferences for health care with (see section 3 'Views, wishes and preferences' of the advance health directive)
- » will put your needs, rights and interests ahead of their own and others' in all decisions
- » will be available to make healthcare decisions on your behalf
- » will be confident in discussing your health care with your health providers.

If you do not feel confident that you have suitable people in your life to undertake these responsibilities, you can nominate the Public Guardian as your attorney for health matters. To find out more about appointing the Public Guardian, contact details for the Office of the Public Guardian can be found at the end of this guide.

How many attorneys can you appoint?

You can appoint more than one attorney for health matters under an advance health directive.

Having more than one attorney may be helpful, as it means more than one person may be able to make decisions if needed. If one of your attorneys is unavailable, another attorney could make the decision.

HOW MUST YOUR ATTORNEYS MAKE DECISIONS?

You do not need to complete this part if you have only appointed one attorney.

If you are appointing more than one attorney, you can choose how your attorneys make decisions. If you do not specify how your attorneys are to make decisions, your attorneys will be required to make decisions jointly (i.e. all of your attorneys must agree on every decision made).

You have four options to choose how your attorneys are to make decisions. Your attorneys can make decisions:

1. **jointly**

- ✓ all of your attorneys must agree on all decisions and exercise powers unanimously (e.g. signing documents putting a decision into action)

OR

2. **severally**

- ✓ any one of your attorneys can make the decision without having to agree with any other attorney

OR

3. **by a majority**

- ✓ if you have more than two attorneys, more than half of your attorneys must agree before a decision is made

OR

4. **other**

- ✓ you must specify how your attorneys must make decisions (e.g. jointly and severally, or appointing a successive or alternative attorney)

Regardless of the option you choose, multiple attorneys **must** consult with each other regularly to make sure that your interests are always looked after.

Successive and alternative attorneys

If you tick 'other' you can appoint a *successive* or *alternative attorney* to replace an attorney.

NOTE:

Successive attorneys only have power to act when the power given to an original attorney ends. You may specify the circumstances when your successive attorney(s)' power will begin.

An attorney's power can end for a number of reasons. For example, the attorney may die, or lose capacity to make decisions for you due to illness or an accident. In this case you can nominate another replacement attorney (your **successive attorney**) to take over as your attorney and the circumstances when their powers begin.

Alternative attorneys only have power to act in particular circumstances. You must specify the circumstances where your alternative attorney(s) can act. For example, you might have appointed an attorney who often travels overseas for work. Therefore you may want to appoint an **alternative attorney** to act only when that particular attorney is overseas.



Example of a successive attorney

Laura has appointed her husband Robert as her attorney and her son Richard as the successive attorney under her advance health directive. When Laura loses capacity to make decisions, Robert begins to make decisions on behalf of Laura.

When Robert dies, Richard is able to make decisions for Laura.

Laura ticks the 'other' box and writes:

I have appointed Robert Smith as my attorney. If Robert dies or he loses capacity I want Richard Smith to be my attorney.



Example of an alternative attorney

Yusef wants to make his partner Ayah his attorney to make decisions when he loses capacity. But Ayah is often travelling overseas due to her musical career, so she may not always be available.

Yusef decides to make his friends Winston and Emir the alternative attorneys at times Ayah is overseas so that important decisions are not delayed when Ayah is not available.

Yusef ticks the 'other' box and writes:

I have appointed Ayah Aksoy as my attorney. When Ayah Aksoy is unavailable to make decisions, including when she is overseas, I appoint Emir Tekin and Winston Smith to be my attorneys. Emir and Winston must make decisions severally, that is any one of them may decide without the other's agreement.



NOTE: If you appoint more than one successive attorney or more than one alternative attorney, you will need to specify how they must make decisions. For example, will they be required to make decisions jointly, severally or by a majority?

TERMS AND INSTRUCTIONS FOR YOUR ATTORNEY(S)

You are not required to fill in this part. You should cross it out if you do not want to complete it. If you do complete this part cross out any space in the box that you do not use.

If you have appointed an attorney(s) to make decisions about your health care, you can decide how they can use their power and/or give specific instructions they must follow. This can include conditions, limitations and instructions for your attorney(s).

Remember, your attorney(s) cannot make decisions that are inconsistent with your directions in section 4 of your advance health directive.




Examples

1. Before any decision about life-sustaining treatment is made I want my attorney to consult with my children.
2. My attorney can only make decisions when there is a decision to be made about life-sustaining treatment.

SECTION 7: DECLARATIONS AND SIGNATURES

It is very important that you complete this section correctly or your advance health directive may not be valid. You must follow these steps to complete this section correctly:

- » **STEP ONE** **Read the statement under ‘Principal’s signature’** carefully.
- » **STEP TWO** **Sign and date** where indicated **in the presence of an eligible witness** (a justice of the peace (JP), commissioner for declarations, notary public or lawyer). If you are physically unable to sign the form, you can instruct another person to sign for you. They must sign **in the presence of you and an eligible witness**.
- » **STEP THREE** The **eligible witness** must witness your signature and **sign and date the ‘Witness certificate’** confirming that they are an eligible witness and that you have capacity to make the advance health directive.

 **NOTE:** digital (electronic) signatures cannot be used to sign an advance health directive form. If you are printing the form, you may print it in colour or in black and white.

PRINCIPAL’S SIGNATURE

You must have capacity to make an advance health directive.

When you sign this part you confirm that you:

- » **are making this advance health directive freely and voluntarily**—this means that no one is pressuring you to make the advance health directive, you have come to your own decision and you are making it of your own free will
- » **understand the nature and effect of the document you are signing**—this means you understand the directions you are giving and how and when they will operate, and, if you are appointing an attorney(s) for health matters, the powers the document gives to any attorney(s) you have appointed, including their power to make decisions and carry out affairs on your behalf.

Understanding the nature and effect of the document you are signing means that you understand:

- » **the nature and likely effects of each direction in the advance health directive**—that is, you understand the directions you have made (refer to section 4, pages 7–9 of this guide)
- » **when your directions will operate**—that is, your directions will only operate when you do not have capacity to make decisions about your health care covered by the direction. Your directions about life-sustaining treatment will only operate if you are unlikely to regain capacity to make your own decisions about health care and specific circumstances apply (e.g. you are so unwell due to a terminal illness or condition that, in the opinion of two doctors, you are reasonably likely to die in the next 12 months)
- » **that you may revoke a direction at any time you have the capacity to make a decision about the health matter covered by the direction**—that is, you can cancel your advance health directive at any time while you still have capacity to make a decision about the health matter covered by the direction
- » **that at any time you do not have capacity to revoke a direction, you will be unable to effectively oversee the implementation of the direction**—that is, at times when you do not have capacity to cancel an advance health directive, others (including your health providers) can apply your directions about health care (including directions about life sustaining treatment) without any supervision from you.

If you are appointing an attorney(s) for health matters, understanding the nature and effect of the document you are signing also means that you understand:

- » **that you may specify or limit your attorney(s) power and instruct your attorney(s) about the exercise of the power** — that is, you may set terms on the exercise of powers by your attorney(s) or give instructions to your attorney(s) about how they must exercise their power (refer to section 6, page 13 of this guide)
- » **when the power given to your attorney(s) begins** — that is, your attorney(s) for health matters can only begin exercising powers when you lose capacity to make those decisions for yourself. Make sure you understand the choices you have made (refer to section 6, page 10 of this guide)
- » **that once the power for a matter begins, your attorney(s) will have full control and power to make decisions about the matter, subject to any terms or information included in the advance health directive** — that is, when your attorney(s) power for a matter begins, your attorney(s) will be able to make almost any decision that you could have made in relation to your affairs (unless they are limited by law or the terms and instructions in your document). Make sure you understand the types of decisions your attorney(s) can make and the powers they can exercise with regard to your affairs
- » **that you may revoke your attorney(s) appointment at any time if you are capable of appointing another attorney(s) giving the same power** — that is, you can cancel your attorney(s) appointment at any time while you still have capacity to appoint another attorney(s) giving the same power
- » **that the power you are giving to your attorney(s) continues even if you do not have capacity to make decisions about the matter** — that is, your attorney(s) will be able to continue to make decisions and exercise powers about your affairs even when you do not have capacity to make those decisions yourself
- » **that if you are not capable of revoking the advance health directive, you are unable to effectively oversee the use of the power given to your attorney(s) by this document** — that is, at times when you do not have capacity to make decisions yourself, your attorney(s) can make those decisions and exercise powers about your affairs, without any supervision from you. They will only be restricted by the law or the terms and instructions of your advance health directive. However, your attorney(s) must take into account your views, wishes and preferences in making decisions for you — no matter how you have expressed them.

It is okay if you did not understand these things until someone else explained them to you. But you must understand these things before you sign the document.

 **Remember, when signing this part you must do so in front of the eligible witness signing the ‘Witness certificate’. Your witness will ask you questions to make sure you have capacity to make your advance health directive.**

Person signing for the principal

Only complete this part if you (the principal) are physically unable to sign the form yourself, for example, due to a physical impairment.

The person signing for you must:

- » confirm that you instructed them to sign the document
- » be 18 years or older
- » not be the witness for this document
- » not be your attorney (e.g. under an advance health directive or enduring power of attorney).

 **Remember, the person signing for you must sign in front of the eligible witness. You must be present too.**

WITNESS CERTIFICATE

This **must** be completed, signed and dated. It is a legal requirement that an eligible person witnesses your signature.

The witness **must** tick the relevant boxes to confirm that:

- » the principal signed the advance health directive in the presence of the witness, or instructed another person to sign the advance health directive for the principal, and that person signed it in the presence of the principal and witness
- » they are eligible to witness the form.

A witness **must** be a:


- » justice of the peace (JP)
- » commissioner for declarations
- » lawyer
- » notary public.

The witness **must not** be:

- » the person signing for you
- » your attorney (e.g. under an advance health directive or enduring power of attorney)
- » someone related to you or related to your attorney
- » a paid carer or health provider for you (i.e. your health provider)
- » a beneficiary under your will.

The witness is not simply witnessing the principal's signature. The witness has an important role in:

- » verifying that section 5 has been signed and dated by a doctor
- » certifying that, at the time of making the advance health directive, you appeared to have the capacity to do so.

 **NOTE:** If an interpreter assisted in the preparation of this document or if an interpreter is present when this document is witnessed, complete [Form 7 – Interpreter's/translator's statement](#) at www.publications.qld.gov.au


SECTION 8: ATTORNEY(S)' ACCEPTANCE

If you have appointed an attorney(s) for health matters in section 6 'Appointing an attorney(s) for health matters' of your advance health directive, then this section must be completed **by your attorney(s)**. Your attorney(s) can only sign this section **after** both you and the eligible witness have signed section 7 'Declarations and signatures' of your advance health directive. **All your attorney(s) must sign the original copy of your advance health directive.** Your attorney(s) do not have to sign it immediately after or on the same day you and the eligible witness sign. However, they must sign before they can begin making decisions on your behalf.

It does not matter which order your attorney(s) sign this section. Your attorney(s)' signature does not need to be witnessed.

By signing this section your attorney(s):

- » declare that they are eligible to be appointed as your attorney
- » confirm that they:
 - » have read the advance health directive
 - » understand that they are only permitted to make decisions in accordance with the advance health directive and relevant legislation
 - » understand their obligations as an attorney, including the obligation to apply the general principles and health care principles, when exercising a power (refer to 'The duties and obligations of an attorney' explained on pages 22–23 of this guide)
 - » understand the consequences of failing to comply with their obligations as an attorney (including civil and criminal liability if they fail to comply with their legal obligations, explained on page 24 of this guide).

 **NOTE:** You should provide a copy of [Form 10 – Advance health directive explanatory guide](#) (this document) to your attorney(s) to read 'Information for attorneys' on pages 22–24.

SECTION 9: WHAT TO DO WITH YOUR COMPLETED ADVANCE HEALTH DIRECTIVE

Once you have completed your advance health directive, you do not have to lodge or register it anywhere.

However, it is strongly recommended that you:

- » keep the original in a safe place
- » give a certified copy to your attorney(s) (if appointed), doctor or other health provider(s), bank or lawyer that you expect to deal with in the future. This may include your local hospital where they may add it to your patient file (see pages 18–19 'How to make a certified copy of an advance health directive')
- » let your close family and friends know that you have made an advance health directive and where to find the document.

You should review your advance health directive every two years or if your circumstances change.

My Health Record

If you wish your document to be in My Health Record you can upload it via the My Health Record website at www.myhealthrecord.gov.au. Your document will be valid regardless of whether it is uploaded. To access your My Health Record online, you need to have a myGov account and link it to your record. Apart from you, the only people who can view or access your My Health Record are: your healthcare providers (e.g. general practitioners, specialists or hospital staff), people you invite to help you manage your record (nominated representatives) and people who manage your record for you if you are not able to (authorised representatives).

Office of Advance Care Planning

You are able to have your advance health directive uploaded to your Queensland Health electronic record. To do this, send a copy of your document to the Office of Advance Care Planning. This way it will be easily available to authorised clinicians involved in your care when it is required. A copy of your document can be sent to the **Office of Advance Care Planning** at acp@health.qld.gov.au, PO Box 2274, Runcorn, Queensland 4113 or fax 1300 008 227.

Further information

HOW TO ADD ADDITIONAL PAGES

There may be times when you are completing your advance health directive that you need additional space to add more information. For example, you may want to add more attorneys or add more terms and instructions than the space on the form allows.

You can **only** add additional pages at the time you are completing your advance health directive, **not** afterwards.

To add additional pages, follow these instructions:

1. physically attach (e.g. staple) an additional page to your advance health directive at the end of the form with the extra information
2. clearly indicate at the top of the page what you are adding and what part of the advance health directive it relates to (e.g. you should state at the beginning ‘This additional page is for the purposes of adding an additional attorney under section 6’)
3. add all required information (e.g. if you are adding an extra attorney, in addition to their name, add their address and other contact details exactly as they appear on the form)
4. sign and date the additional page when signing the advance health directive in front of your witness
5. make sure your witness completes the total number of pages of the advance health directive (including any additional pages) in section 7
6. your witness should sign any additional pages attached to the advance health directive at the same time they sign section 7
7. You can use [Form 8 — Additional page](#) for this purpose.

HOW TO MAKE A CERTIFIED COPY OF AN ADVANCE HEALTH DIRECTIVE

A certified copy of an original advance health directive can be made by having one of the following people certify a copy of the original advance health directive to the effect that it is a true and complete copy of the original:

- » the principal (the person who made the advance health directive)
- » a justice of the peace (JP)
- » a commissioner for declarations
- » a notary public
- » a lawyer
- » a trustee company under the [Trustee Companies Act 1968](#)
- » a stockbroker.

The following process is suggested to make a certified copy of an original advance health directive:

1. make a photocopy of the completed original advance health directive (including any additional pages)
2. provide the photocopy and original advance health directive to a person from the above list
3. the person from the above list:
 - » compares each page of the photocopy with the original advance health directive to verify that the photocopy is a true and complete copy of the original advance health directive (including any additional pages)
 - » checks that the number of pages (including any additional pages) corresponds with the number of pages indicated on the witness certificate in the document
 - » signs or initials each page of the photocopy (including any additional pages), other than the page on which the certification below is made

- » makes a certification on the first or last page:

This is to certify that this _____ page document is a true and complete copy of the original _____ page advance health directive.

Date: _____

Signed: _____

Name: _____

Position/Qualification: _____

The above suggested process is an example of one process that a person from the above list can use to make a certified copy of an advance health directive. Justices of the peace (JPs), commissioners for declarations, lawyers and other witnesses may have their own processes and certifications (stamps) which are equally as valid.

REVIEWING YOUR ADVANCE HEALTH DIRECTIVE

It is highly recommended that you review your advance health directive every two years or if your circumstances change.

REVOKING (CANCELLING) YOUR ADVANCE HEALTH DIRECTIVE

You may revoke (cancel) your advance health directive any time you have capacity to do so. See the [Queensland Capacity Assessment Guidelines 2020](#) for information about the capacity required to revoke an advance health directive.

You do not need to complete a specific form to cancel or revoke your advance health directive. However, any revocation must be in writing and you must take all reasonable steps to advise any attorney(s) (if appointed) that it has been revoked.

Other circumstances when your advance health directive may be revoked (cancelled)

Other circumstances in which your advance health directive may be revoked (cancelled) include if:

- » **you make a later advance health directive (which may include one made in another state or territory)** – your earlier advance health directive is revoked to the extent of any inconsistency with any later advance health directive that you complete
- » **you die** – your advance health directive is automatically revoked on your death (your attorney, if you have appointed one, only has power to make decisions while you are alive)
- » **the terms of your advance health directive provide for its revocation** – for example, if your advance health directive is expressed to operate only for specific period or specific purpose then it is revoked at the end of the period, or when the specific purpose is achieved
- » **you get married or enter into a civil partnership** – unless your advance health directive states otherwise, your advance health directive is automatically revoked to the extent it gives power to someone that is not your current spouse or civil partner
- » **you get divorced or your civil partnership is terminated** – your advance health directive is automatically revoked to the extent it gives power to your previous spouse or civil partner
- » **the Queensland Civil and Administrative Tribunal or the Supreme Court orders that your advance health directive is revoked.**

Your advance health directive may also be revoked, to the extent that it gives power to an attorney to make decisions about health matters, if the attorney:

- » **dies**
- » **resigns** – an attorney can resign by giving you a signed notice when you still have capacity to make another advance health directive appointing an attorney
- » does not have **capacity** for the matter for which they have been appointed
- » is or becomes your **paid carer**
- » is or becomes your **health provider**
- » is or becomes a **service provider for a residential service** where you reside.

A paid carer is someone who is paid a fee or wage to care for a person but not someone receiving a carer's pension or benefit.

INFORMATION FOR THE DOCTOR

Doctors have an important role in assisting a principal to make an advance health directive. The principal should discuss healthcare directions in the advance health directive, including the meaning and consequences of those directions, with a doctor. The directions should be sufficiently clear for a doctor to follow.

The doctor must complete section 5 ‘Doctor certificate’ of the advance health directive by signing and dating where indicated. In signing the certificate, the doctor is certifying that the principal appeared to have the capacity needed to make the advance health directive.

Capacity to make an advance health directive means that the principal:

- » is capable of making the advance health directive freely and voluntarily
- » understands the nature and effect of the advance health directive.

More information about assessing the principal’s capacity to make an advance health directive can be found in the [Queensland Capacity Assessment Guidelines 2020](#).

A doctor signing this section must **not** be:

- » the person witnessing the advance health directive (in section 7)
- » the person signing for the principal in the advance health directive (in section 7)
- » an attorney for the principal (e.g. under an advance health directive or enduring power of attorney)
- » a relation of the principal or a relation of an attorney of the principal
- » a beneficiary under the principal’s will.

INFORMATION FOR THE WITNESS

Who can witness an advance health directive?

An **eligible witness** for an advance health directive must be a:

- » justice of the peace (JP)
- » commissioner for declarations
- » notary public
- » lawyer.

The eligible witness **must not** be:

- » the person signing the advance health directive for the principal
- » the principal’s attorney (e.g. under an advance health directive or enduring power of attorney)
- » a relation of the principal or a relation of an attorney of the principal
- » a paid carer or health provider of the principal
- » a beneficiary under the principal’s will.

The role of the witness

The witness is not simply witnessing the principal’s signature. The witness has an important role in:

- » verifying that section 5 ‘Doctor certificate’ has been signed and dated by a doctor
- » certifying that the principal appeared to have capacity to make the advance health directive.

Capacity to make an advance health directive means that the principal:

- » is capable of making the advance health directive freely and voluntarily
- » understands the nature and effect of the advance health directive.


The witness should confirm the identity of the principal through an official form of identification, such as a driver's licence.

If the principal wants to add **additional pages** to the advance health directive, it is recommended that both the principal and the witness sign and date each additional page and fill in the total number of pages (including any additional pages) on the witness certificate in section 4.

Keeping a written record of your conversation with the principal

It is strongly recommended that the witness makes a written record of the conversation and the evidence that the witness relied upon to come to the conclusion that the principal appeared to have capacity to make the advance health directive.

For further information about assessing a person's capacity to make an advance health directive, refer to the [Queensland Capacity Assessment Guidelines 2020](#).

 **NOTE:** If an interpreter assisted in the preparation of this document or if an interpreter is present when this document is witnessed, complete [Form 7 – Interpreter's/translator's statement](#) at www.publications.qld.gov.au

INFORMATION FOR ATTORNEYS

When can an attorney begin making decisions?

An attorney appointed by an advance health directive can only make decisions about the principal's health care when:

- » the attorney has signed section 8 'Attorney(s) acceptance' of the advance health directive
- » the principal does not have capacity to make their own decisions about their health care and their advance health directive does not cover the matter.

All adults are presumed to have capacity to make their own decisions until it is proven otherwise. Just because a person is older or has a diagnosed illness such as dementia does not mean that they do not have capacity to make their own decisions about health care. A loss of capacity may be temporary only, and the person may regain capacity at different times.

For a principal to have capacity to make their own healthcare decisions, they must be capable of:

- » understanding the nature and effect of the decisions they are making
- » making the decisions freely and voluntarily
- » communicating the decisions they have made in some way.

A person's capacity can be increased with support. Before deciding that a person does not have capacity to make decisions about health care they should be provided with the support and information they need to make the decision themselves.

For more information about capacity and conducting an assessment to determine if a principal has capacity to make their own decisions about health care, the attorney should read the [Queensland Capacity Assessment Guidelines 2020](#).

It is strongly recommended that an attorney seek a capacity assessment from an independent person (e.g. a general practitioner or other health practitioner).

If it is unclear whether the principal has capacity to make their own decisions about health care, a medical practitioner can provide an assessment and report or the Queensland Civil and Administrative Tribunal (QCAT) or the Supreme Court can make a declaration about the principal's capacity.

The duties and obligations of an attorney

An attorney has important legal duties and obligations that they must comply with. It is strongly recommended that a person **seek advice from a professional (such as a lawyer) when considering whether to accept an appointment as an attorney.**

An attorney's legal duties and obligations include:

» Applying the general principles and the health care principles

In making decisions about health care for the principal an attorney must apply the general principles and the health care principles under the [Guardianship and Administration Act 2000](#) and the [Powers of Attorney Act 1998](#).

The **general principles** require an attorney to:

- » presume that the principal has capacity to make their own decisions
- » recognise and protect the principal's right to make their own decisions
- » if possible, support the principal to make and communicate their own decisions
- » when making decisions on behalf of the principal, recognise and take into account their views, wishes and preferences.

The general principles also reflect important human rights, such as the right to privacy, and require the attorney to make decisions in a way that is least restrictive of the principal's rights, interests and opportunities.

When making a decision about health care for the principal, the **health care principles** also require an attorney to take into account the views and wishes of the principal (including those in the principal's advance health directive).

An attorney must also consider information from the principal's health provider, and if health care is proposed, consider the following:

- » any alternative health care available
- » any significant risks associated with the health care
- » if the health care can be postponed because a better option may become available within a reasonable time, or the principal may regain capacity to make their own decision
- » the consequences for the principal if the health care is not carried out
- » the benefits and burdens of the proposed health care for the principal
- » the effect of the health care on the principal's dignity and autonomy

For further information see [Factsheet: General principles and health care principles under Queensland's guardianship framework](#).

» **Exercising powers in accordance with the terms and conditions of the advance health directive**

Any attorney appointed under an advance health directive should read the document first. It will contain important information about how they may exercise their power to make healthcare decisions on behalf of the principal. For example, the advance health directive will state:

- » the principal's directions about health care (section 4) – the attorney cannot make decisions that are inconsistent with those directions
- » if there are multiple attorneys, how the attorneys must exercise their powers (section 6) – the attorney must exercise their powers jointly, severally, by a majority or any other way specified by the principal
- » terms and instructions for the attorney (section 6) – the principal may decide to set terms on the exercise of powers by an attorney or provide instructions.

» **Acting honestly and with reasonable diligence**

Attorneys must be careful to act only in the principal's interests, not any other person's interests. They must also act diligently and pay reasonable attention when making healthcare decisions for the principal, so their decisions have the best chance of protecting the principal's interests. This may include, for example:

- » seeking all the relevant information about the principal's condition and treatment options before making a healthcare decision
- » seeking a second opinion for treatment that may pose a particular risk to the principal
- » making sure the principal has regular check-ups and has access to preventative care and screening relevant to their age and health conditions.

» **Consulting with the principal's other attorney(s)**

If more than one attorney is appointed in the advance health directive, the attorney(s) are obliged to consult with each other regularly to ensure the principal's interests are not negatively affected by a breakdown in communication between the attorneys.

» **Being careful not to inappropriately disclose confidential information**

Attorney(s) appointed to make decisions about health care will likely have access to confidential information about the principal, including their medical records. An attorney must be provided with all of the relevant information that is needed by them to make an informed decision. However, the attorney is obliged to protect the principal's privacy and keep this information confidential, except where it must be disclosed in performing their role as a healthcare decision-maker.

What are the consequences if I do not fulfil my obligations as an attorney?

The consequences of failing to comply with the duties and obligations described above could include:

- » **removal as an attorney** — QCAT has the power to remove a person as an attorney where the attorney has not complied with their obligations
- » **criminal liability** — failing to act honestly and with reasonable diligence in your role as an attorney is a criminal offence.

If you are unsure about your role or obligations as an attorney, you should seek independent legal advice.

If I no longer want to act as an attorney, how do I resign?

You can resign as attorney for a matter by giving written notice to the principal, provided the principal has the necessary capacity. However, if the principal does not have capacity for the matter, you can only resign with the approval of QCAT or the Supreme Court.

Frequently asked questions (FAQs)

Do I have to register my advance health directive?

No. It is not a legal requirement for you to register your advance health directive.

See section 9 ‘What to do with your completed advance health directive’ on page 17.

When does my advance health directive end?

Your advance health directive continues even if you lose capacity (see the [Queensland Capacity Assessment Guidelines 2020](#)).

For more information about when an advance health directive may end see page 19 ‘Revoking (cancelling) your advance health directive’.

How do I revoke (cancel) an advance health directive?

See page 19 ‘Revoking (cancelling) your advance health directive’.

I completed an advance health directive under the other previous approved form for an advance health directive – is it still valid?

Yes. If your advance health directive was made correctly using an older version of the form and it was valid, it will continue to be valid.

However, if an attorney appointed under your advance health directive is a service provider for a residential service where you are a resident, then that person may no longer be eligible to act as your attorney.

How do I get a certified copy of my advance health directive?

See pages 18–19 ‘How to make a certified copy of an advance health directive’.

How do I make changes to an advance health directive once it has been completed and signed?

If you want to make changes, you can revoke your current advance health directive and create a new one, or create a new advance health directive which will override your old document to the extent of any inconsistencies. It is not recommended that you write on your existing advance health directive once it has been signed and witnessed. For minor changes, like updating your address, you may not need to make a new advance health directive. If you want to update certain details such as your phone number, it may be better to simply let the people you have given a copy of the advance health directive to know your updated details. It is recommended that you seek advice from a lawyer about changing your advance health directive.

How do I appoint extra attorney(s) if there is not enough space in the advance health directive form?

To appoint more attorney(s) you must first tick the box in section 6 ‘Appointing an attorney(s) for health matters’ of the advance health directive form indicating that you are appointing extra attorney(s). Then add any additional page(s) to the advance health directive with the details of the extra attorney(s) and for the attorney(s) to sign to accept their appointment. See page 18 ‘How to add additional pages’.

Can I record my wishes about organ and tissue donation in my advance health directive?

No. The advance health directive does not allow you to record whether or not you wish to donate your organs and tissue **after you have died**. For more information about organ donation and to register your wishes visit donatelife.gov.au.

Types of substitute decision-making arrangements

Queensland’s guardianship legislation recognises a number of substitute decision-makers and authorises the exercise of power for a matter for an adult with impaired capacity for a matter.

Depending on the type of matter, a substitute decision-maker may be:

An informal decision-maker	A member of the adult’s support network acting on an informal basis (Queensland’s guardianship legislation recognises that a member of an adult’s support network may make decisions for them on an informal basis). An informal decision-maker cannot make an enduring document on behalf of an adult.
An attorney for personal (including health) matters	An attorney for personal (including health) matters appointed by the adult under an enduring power of attorney or advance health directive (enduring documents). The enduring document must have been made by the adult at a time when they had capacity to make the document.
An attorney for financial matters	An attorney for financial matters appointed by the adult under an enduring power of attorney. The enduring power of attorney must have been made by the adult at a time when they had capacity to make the document.
A statutory health attorney	A statutory health attorney (listed in order of priority in Queensland’s guardianship legislation) is an adult’s spouse, unpaid carer, or close friend or relative over the age of 18 years who has automatic authority under Queensland’s guardianship legislation to make decisions about health care. If none of the above people are available or culturally appropriate, the Public Guardian is an adult’s statutory health attorney.
A guardian for personal (including health) matters	A guardian may be appointed by QCAT or the Supreme Court to make decisions about the adult’s personal (including health) matters.
An administrator for financial matters	An administrator may be appointed by QCAT or the Supreme Court to make decisions about the adult’s financial matters.
QCAT or the Supreme Court	There are certain matters for which QCAT and the Supreme Court can make an original decision.

If you need further assistance

Online resources

For information about enduring powers of attorney, advance health directives and substitute decision-making under the guardianship framework in Queensland, guidance on assessing the capacity of an adult to make decisions or an enduring document (including the *Queensland Capacity Assessment Guidelines 2020*) and copies of all related forms and explanatory guides, visit www.qld.gov.au/guardianship-planahead

Office of the Public Guardian

Find information about the role of the Public Guardian at www.publicguardian.qld.gov.au
You can appoint the Public Guardian as your attorney for personal and health care matters.
Tel: **1300 653 187**

The Public Trustee of Queensland (PTQ)

Find information about the role of the PTQ at:
www.pt.qld.gov.au
Email: Clientenq@pt.qld.gov.au
Tel: **1300 360 044** Monday to Friday, 8:15am–5pm

Queensland Law Society

For information about finding a solicitor for legal advice: www.qls.com.au
Tel: **1300 367 757** Monday to Friday, 8:30am–5pm.

Justices of the Peace Branch

Information on how to locate the services of a Justice of the Peace or Commissioner for Declarations can be found here www.qld.gov.au/findjp
Tell: **1300 301 147** Monday to Friday 8:30am–5pm
Email: jp@justice.qld.gov.au

Community Legal Centres

Call or visit your nearest community legal centre, Seniors Legal and Support Service or specialist legal centre for people with disability or mental illness. Community legal centres can provide free legal advice for your situation.
You can find local legal help at:
www.communitylegalqld.org.au

Queensland Civil and Administrative Tribunal (QCAT)

Applications for guardianship and administration, as well as applications regarding capacity and attorneys can be made at QCAT.
Information about making an application to QCAT is available at: www.qcat.qld.gov.au
Tel: **1300 753 228** Monday to Friday, 8:30am–3pm.

13 HEALTH

13 HEALTH is a confidential phone service that provides health advice to Queenslanders. The service can direct you to a local GP service who can provide advice and assistance to complete an enduring power of attorney or advance health directive form.
You can phone and talk to a registered nurse 24 hours a day, 7 days a week for the cost of a local call.
Tel: **13 43 25 84**

Office of Advance Care Planning

The **Office of Advance Care Planning** is a free statewide service that helps Queenslanders plan and share their healthcare wishes.
The Office of Advance Care Planning is able to upload a copy of your advance health directive, enduring power of attorney, revocation documents and Statement of Choices to your Queensland Health electronic record.

Only authorised clinicians involved in your care can access uploaded advance care planning documents.

For more information, please contact the Office of Advance Care Planning via:
Phone: 1300 007 227, email: acp@health.qld.gov.au or visit: www.mycaremychoices.com.au.

If you need an interpreter



If you have difficulty understanding this publication and need language assistance, please call **13QGOV (137468)**, ask for an interpreter and ask them to telephone any of the agencies in this section.

If you are deaf or have a hearing or speech impairment



Use the National Relay Service to phone any of the agencies in this section.

For more information visit:
www.communications.gov.au/accesshub

Mental health resources

You can find information relating to directions for mental health at:
www.health.qld.gov.au/mental-health-act
Tel: **1300 MH CALL (1300 642255)**

Form 10 – Advance health directive explanatory guide

