

# Advance Health Directives and less restrictive way of treatment

The *Mental Health Act 2016* promotes the use of advance health directives and treating persons in a 'less restrictive way'. Promoting the use of advance health directives and other alternatives to treatment without consent under the Act gives individuals greater control over their future healthcare, and supports consumer empowerment and patient recovery.

## What is an advance health directive?

An adult may make an advance health directive about his or her own future healthcare.

An advance health directive gives consent to the person's treatment and care when the person is not able to make decisions for himself or herself.

An advance health directive may also include the person's views, wishes and preferences about their future treatment and care at a time when the person is not able to make decisions for himself or herself.

Advance health directives are made under the *Powers of Attorney Act 1998*.

## Who is an attorney?

A person may appoint one or more persons to be an attorney for the person under an advance health directive.

An attorney may give consent to the person's treatment and care at a time when the person is not able to make decisions about his or her own healthcare. This consent must not relate to electroconvulsive therapy.

An attorney may be appointed instead of, or in addition to, a person giving consent to treatment under a directive.

Attorneys may be appointed to make decisions jointly or individually.

The advance health directive may also place limits on the decisions an attorney can make.

A person may also appoint an attorney under an *Enduring Power of Attorney*. An attorney may be appointed for 'personal matters', which includes healthcare.

An Enduring Power of Attorney is also made under the *Powers of Attorney Act 1998*.

## Who is a guardian?

A guardian may be appointed by the Queensland Civil and Administrative Tribunal (QCAT) to make decisions for a person who is not able to make decisions for himself or herself in an ongoing way.

QCAT must decide what matters a guardian can make decisions for. This may include healthcare decisions.

## What are the alternatives to making a treatment authority for a person?

A treatment authority can only be made for a person if:

- the treatment criteria apply to the person, and
- there is no less restrictive way for the person to receive treatment and care for the person's mental illness.

The treatment criteria are explained in the *Fact Sheet: Examinations and Assessment*.

There is a *less restrictive way* for a person to receive treatment and care for the person's mental illness if the person is able to be treated in one of the following ways:

- if the person is a minor - with the consent of the minor's parent
- if the person has made an advance health directive - under the advance health directive

- if a personal guardian has been appointed for the person by QCAT - with the consent of the personal guardian
- if an attorney has been appointed by the person - with the consent of the attorney, or
- with the consent of the person's *statutory health attorney*, other than the Public Guardian.

A person's statutory health attorney is (in order):

- a spouse, if the relationship between the adult and the spouse is close and continuing
- an adult carer for the person, but not a paid carer for the adult, and
- an adult who is a close friend or relation of the adult but is not a paid carer for the adult.

The effect of these provisions is that a person must be treated in one of the less restrictive ways if the person's treatment and care needs can reasonably be met this way.

### How will this work in practice?

The *Advance Health Directive for Mental Health - Guide and Form* has been prepared for persons wishing to make an advanced health directive.

Anyone who wishes to make an advance health directive should do so in consultation with a treating doctor. This will improve the likelihood that the directive will be adequate for a person's treatment and care if required.

Once a directive is completed, it should be given to a staff member at an authorised mental health service, such as an Independent Patient Rights Adviser. The directive will then be placed on the person's health records for future reference.

A person can also ask for an *Enduring Power of Attorney* to be placed on the patient's health records.

Before considering making a treatment authority, the Act requires an authorised doctor to check the patient's health records to see if there is an advance health directive or enduring power of attorney in place.

If an authorised doctor makes a treatment authority despite the existence of an advance health directive, the doctor must explain to the person why the authority was made and record the reasons in the patient's health records.

Even if a treatment authority is made for a person, an authorised doctor must consider the views, wishes and preferences stated in a directive.

If an authorised doctor decides to treat a person contrary to the views, wishes and preferences stated in a directive, the doctor must explain to the person why this decision was made and record the reasons in the patient's health records.