

Getting your affairs in order

Information for people affected by cancer

It's a good idea for everyone to get their affairs in order, whether you have cancer or not. By preparing a few simple documents, you can make sure that your wishes are followed, and you will make things easier for your family at a difficult time.

'Getting your affairs in order' usually means:

- making a will
- preparing documents that will help others to make decisions for you if you're not able to make them yourself
- nominating a beneficiary for your superannuation and insurance
- sorting out legal and financial paperwork.

This fact sheet explains the key issues involved in getting your affairs in order.

Making a will

A will is a legal document that records what you want to happen to your assets after you die. These assets are called your estate.

Who can make a will?

Anyone aged 18 or older can make a will, as long as they have 'testamentary capacity'. This means that they:

- understand what a will is
- can communicate what they want to put in their will and why.

If there could be any doubt about whether you have testamentary capacity (for example, if you are on heavy pain medication that is affecting how you think), it's a good idea to get a doctor's certificate.

Who should make a will?

All adults should have a valid will. It's the best way to make sure that your assets are distributed

in the way you would like after you die. If you don't make a will, the law will decide who gets your property when you die, and it might not be who you would like.

Why is it important to make a will?

Even if you don't own much, making a will is a good idea. Having a will makes it easier for your family and friends to make legal and financial arrangements after you die. Without a will, these arrangements can be complicated and expensive.

A will is particularly important for anyone with a family or dependants, especially if you are separated or divorced.

How do I make a will?

There are a number of ways to make a will.

- **Talk to an expert** – A lawyer can help you draft a will. Some people draft their own wills using kits bought from a newsagency or post office. However, there are certain requirements for a will to be valid (see *What makes a will valid?* on page 2) and using a lawyer ensures you get it right. Lawyers charge different fees to draft wills. Ask around to make sure you get the best deal. If you can't afford to pay, Cancer Council may be able to arrange a lawyer to draft a will for free.
- **Use the Public Trustee for the Northern Territory** – This is a government body that can help you draw up a will for free, but you must appoint them as executor of the estate. The Public Trustee will charge fees to administer the estate after you die.

What's in a will?

Wills usually include:

- who you want to leave your money and property to (beneficiaries)

Getting your affairs in order

- who should have responsibility for administering your estate (executor)
- who should look after your children if you and the other parent both die before the youngest child turns 18 (guardians).

Before you talk to a lawyer, have a think about who you would like to appoint in these roles.

Some assets such as superannuation and insurance may not form part of your estate. Benefits may be paid directly to your dependants, which means your will won't have any effect on them. For more information, see *Superannuation death benefit nominations* on page 4.

What makes a will valid?

For a will to be valid it must be:

- in writing – (handwritten, typed or printed)
- signed and dated on every page
- witnessed by two people who are not beneficiaries in the will and who are aged over 18. They will need to witness your signature and sign their own name on every page. They need to both be present at the same time.

I made a will a few years ago. Do I have to redo it?

It's a good idea to review a will regularly (e.g. every five years) to see if it needs updating.

If you have been married since you made a will, you will need to make a new will. If you have been divorced, separated or had children since your last will, it may be a good idea to write a new will or have your lawyer help you make a formal addition called a codicil.

Can anyone challenge my will?

Yes. The law expects people to make 'proper provision' for certain people. These include:

- current spouses
- de facto partners who are living with you immediately prior to your death
- children.

If you don't make provisions for these people, they can go to court and challenge your will. If you want to leave any of these people out of your will, you should talk to a lawyer.

In certain circumstances financially dependent grandchildren, step children and parents may have claims against your estate. Former spouses or de facto spouses may have claims if there would have been an entitlement to make a claim against you if you were still alive.

The Court will consider a claimant's needs, their relationship to you and whether they contributed to your estate (e.g. as part of a marriage).

What happens if I don't make a will?

An administrator (often a relative) will be appointed to carry out similar duties to an executor. The law provides a formula for the distribution of assets of a person who has not left a will. This may not work out the way you would have wanted.

If you don't have a will, legal procedures may be more complicated and time-consuming. This may cause expense and worry to your family.

Planning ahead

Advance care planning means preparing documents



Witnessing a signature doesn't mean you wrote the will or have read and understood what's in it. It just means that you saw the testator (person who made the will) sign the document. Anyone aged over 18 can be a witness. It's a good idea for everyone – the testator and witnesses – to use the same pen.

If your will is not made in this manner, it may not be enforceable. The Court has the power to grant probate (confirm that the will is valid) or deny probate, and your property could be disposed of as if you had not made a will. In exercising this power, the Court needs to be satisfied that the document sets out how you want your assets to be distributed.

Where should I keep my will?

Keep your will in a safe place. Your lawyer will usually hold the will for you, or you could keep it with your other important documents. It's important you tell your executor where your will is kept.

Getting your affairs in order

now that will help your family and friends make decisions on your behalf if you're not able to make them yourself.

This includes decisions about your finances, property, medical care and lifestyle. You can use advance care planning documents to set out your wishes in relation to all of these things.

The planning document for use in the NT is an Advance Personal Plan. You can get more information and a copy of the form at <https://nt.gov.au/law/rights/advance-personal-plan>.

The plan contains:

- Legally binding Advance Consent Decisions about your future health care
- Advance Care Statements about your views and wishes for future medical treatment and lifestyle care
- The appointment of a substitute decision maker for health, financial, legal or lifestyle matters.

As is the case with a will, you need to have capacity to make these documents. This means understanding what the documents are and communicating what you want to include in them, and why. If there could be any doubt about your capacity, it's a good idea to get a doctor's certificate to prove you have capacity.

Before making these documents, you may want to identify a person or people you trust and communicate your wishes to them.

Appointing a substitute decision maker for legal or financial matters

Appointing a substitute decision maker for legal or financial matters gives another person the ability to make legal or financial decisions on your behalf.

Types of decisions they can make – You can specify the types of decisions allowed. These could include managing your bank accounts, paying bills, selling property, and dealing with government departments such as Centrelink.

The appointed person can't make certain important decisions, like voting on your behalf or making your will. You can also impose conditions or

limitations on the attorney's power – for example, to prevent them selling a particular asset that you own.

Who can be appointed – You can appoint any person you trust who is aged 18 or over as your substitute decision maker. You can appoint more than one person if you would prefer, and you can specify that they must act jointly (make all decisions together) or severally (decisions can be made by either person).

Your appointment of a substitute decision maker begins if you lose the ability to make decisions for yourself.

How to appoint a substitute decision maker

A lawyer can help you or you can download the Advance Personal Plan form at <https://nt.gov.au/law/rights/advance-personal-plan> and complete sections 1, 4 and 5.

Your appointment of a substitute decision maker for financial or legal matters must be witnessed by a lawyer, Justice of the Peace (JP) or some other qualified person. The document should be registered at the Land Titles Office if your substitute decision maker wishes to deal with your assets such as land, bank accounts or shares.

If you haven't appointed a substitute decision maker and you lose the ability to make your own decisions, the Public Guardian or a relative can make an application to be appointed your adult guardian. The Court may appoint a financial manager to make legal and financial decisions for you. This may be your adult guardian but often the Public Trustee is appointed jointly with a relative. The manager of your financial affairs may not be the person you would have chosen.

Appointing a substitute decision maker for healthcare and welfare matters

Appointing a substitute decision maker for health care and welfare matters gives another person the ability to make medical and lifestyle decisions on your behalf.

Types of decisions they can make – These decisions include what medical or dental treatment you should receive, where you should live, what

Getting your affairs in order

kinds of personal services you should receive, and what health care you should receive. A substitute decision maker for health care and welfare decisions only steps in if you become unable to make your own decisions.

Who can be appointed – You can appoint anyone aged 18 and over.

You can appoint more than one person as your substitute decision maker for health care and welfare matters, and you can specify that they must act jointly (make all decisions together) or severally (decisions can be made by either person).

In the appointment of a substitute decision maker, you can also outline your wishes. This might include, for example, what type of treatment you do and don't want, and whether you want to be artificially resuscitated or placed on life support. Your substitute decision maker has to follow your wishes.

How to appoint substitute decision maker for health care and welfare matters –

A lawyer can help you or you can download the Advance Personal Plan form at <https://nt.gov.au/law/rights/advance-personal-plan> and complete sections 1, 4 and 5.

The appointment of a substitute decision maker for health care and welfare matters has to be witnessed by a lawyer or some other listed professional occupations.

If you lose capacity and you haven't made an appointment of a substitute decision maker, the law decides who makes decisions for you. The law says that this will be your spouse or de facto, if you have one; or your adult children or a close friend or relative. If there's any doubt about who it should be, a Guardianship Panel and the Local Court will decide.

Advance consent decisions

An advance consent decision is a document that sets out your wishes for your future medical care.

Types of issues it covers – Whether you want to receive artificial nutrition or hydration, whether you want to be resuscitated, or whether you want to receive antibiotics as part of your treatment.

The more guidance you provide on your preferences, the more likely your family and health care providers will make decisions that respect your wishes.

If you have particular religious beliefs that impact on your health care decisions, you can also record these in your advance consent decision.

An advance consent decision only comes into effect if you become unable to make your own decisions, but to be valid it needs to be made while you have capacity.

If you make an advance consent decision and an appointment of a substitute decision maker, your substitute decision maker must comply with the advance consent decision.

In an emergency, where the medical practitioner or hospital is unaware of an advance consent decision and it is not possible to obtain consent for treatment, medical intervention may be carried out in what the medical practitioner or hospital believes to be in your best interests.

How to make an advance consent decision –

Most lawyers will help you draft an advance consent decision, but it doesn't need to be witnessed by a lawyer. You can also prepare one by simply writing down your wishes.

Where to keep a copy – You should keep a copy of your advance consent decision and give one to your GP, oncologist, any appointed substitute decision makers for health care or welfare matters and a family member or friend. You can ask for it to be placed in your medical record and for your solicitor to keep a copy.

Whatever your wishes are, you should inform your family members and carers.



Getting your affairs in order

Superannuation death benefit nominations

When a member of a superannuation fund dies, the fund pays out their death benefit to one or more of their dependants. This includes the preserved amount (the contributions the member made while they were working) and any insurance benefit.

You can tell your superannuation fund who you would like to receive your death benefit. You can do this by completing a death benefit nomination or a binding death benefit nomination. The binding nomination means the fund trustee must follow your wishes. Binding death benefit nominations must be updated every three years. Contact your superannuation fund for a nomination form.

You can only nominate someone who is a financial dependant (or interdependant), such as a spouse, de facto partner or child. If you have another life insurance policy (not connected to your superannuation account), you will need to nominate the beneficiary of that policy separately. Contact your insurer to do this.

Important documents to gather together might include:

- birth, marriage and divorce certificates
- bank and credit card information
- share and other investment details
- Centrelink and Medicare details
- superannuation and insurance information
- funeral information
- house title/lease documents
- passport.

Where to get help and more information

- Cancer Council 13 11 20 for Information and Support
- Public Trustee NT - <https://nt.gov.au/law/rights/advance-personal-plan>



Many superannuation funds offer life insurance as a default option. See the *Superannuation and cancer* fact sheet for details.

Organising your paperwork

It's a good idea to have all of your paperwork in the one place. This will make it easier if, for example, you need to be in hospital for a long time and a family member has to help you with financial and legal matters.

Note to reader

This fact sheet provides general information relevant to the Northern Territory only and is not a substitute for legal advice. You should talk to a lawyer about your specific situation.

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For information and support on cancer-related issues, call Cancer Council 13 11 20. This is a confidential service.