

# Estate Planning

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Acorn Lawyers Monthly Estate Planning Update



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## Estate Planning Offers

Do you fancy a coffee? I am always interested in catching up with referrers new & old to discuss the estate planning requirements of your clients and how Acorn Lawyers can be of assistance. I will even buy the coffee!

For those wishing to learn more about estate planning I offer free in house seminars for you and your staff. Seminars can also be arranged for your clients. On request, we can also send you free copies of our estate planning booklet which contains useful information on estate planning.

Contact Hannah Swindells to arrange.



## Advance Health Care Directives and Appointments of Enduring Guardians

### Appointment of Enduring Guardian

A Guardian appointed under an Appointment of Enduring Guardian (**AOEG**) is empowered to make health and lifestyle decisions on behalf of a person. The AEOG only operates if that person loses the ability to make these decisions for themselves. Everyone should have an AOEG as the following story shows.

### Jenny and the Prolonged Ending

*Jenny had a long and content life and was ready to pass on. She was never afraid of dying, but didn't discuss it with her three sons (Bill, Will and Phil). She just assumed she would leave quickly and with little fuss!*

*Jenny was diagnosed with Alzheimer's and continued to deteriorate until she entered a permanent vegetative state. While everyone was distressed, Bill and Will knew that mum would not want treatment aimed at simply keeping her alive. But as they had not been appointed as Jenny's Guardians, they did not have the authority to stop this treatment.*

*With no AEOG, their only option was to apply for an order from the Guardianship Tribunal. Phil though disagreed with their decision, he couldn't let go of mum! During a lengthy tribunal hearing with substantial costs and extensive family pain, Jenny finally passed away after two months of lying in a hospital.*

### Advance Health Care Directive

An Advance Health Care Directive (**AHCD**) is a written statement of a person's wishes for their future medical treatment and health care should they become unable to communicate these wishes. Unlike an AOEG, an AHCD allows a person to make their own decisions now regarding future treatment, rather than simply appointing someone else to decide. The AHCD finds its origins in common law.

### Hunter and New England Area Health Service v A [2009] NSWSC 761

Mr A developed renal failure and was kept alive by mechanical ventilation and kidney dialysis in hospital. The hospital later became aware of a document drafted by Mr A stating he would refuse renal dialysis. The hospital sought a declaration to effect his wishes.

The Court recognised the supremacy of the right of the individual to choose what is done with their body. An adult with full mental capacity has the right to decide whether or not to receive medical treatment, even where they would otherwise die.

An "Advance Care Directive" that unambiguously states a person does not wish to receive certain medical treatment must be respected. It would be battery to otherwise administer this treatment, regardless of the reasons for refusing treatment.

This is **NOT** euthanasia. The Court clearly stated this is not recognition of a "right to die". It is a right to make a choice to refuse future treatment.

### Benefits of an AHCD

While most people do not wish to lie in a hospital bed with no quality of life, it is a tough decision to switch off life support machines. Returning to Jenny's story, an AHCD stating her wishes would have enabled Jenny to make the decision to die naturally as she wished. As the AHCD takes precedence over the AOEG, it would have been Jenny's decision to switch off the machines, relieving her sons from the guilt and heartache of making this tough decision.

### Aged Care Facilities

The majority of aged care facilities now require residents to have an AHCD. If they do not have an AHCD, new residents are usually required to sign the aged care facilities' standard AHCD. I have a number of older clients who have recently entered aged care facilities and I am shocked by the poor quality of the AHCDs my clients have been required to sign. They are often standard forms with tick boxes and mistakes are common.

Acorn Lawyers' AHCDs are tailored to individual client needs and contain extensive provisions to cover a wide range of different medical treatment to ensure client wishes for each unique scenario are correctly reflected. As with all our documents there are no *off-the-shelf* precedents. Our AHCD covers not only refusal of treatment, but prior medical history, allergies etc. to ensure where treatment is desired, doctors are informed to administer correct treatment for the individual.

- Lindsay Stoddart, Director

\*All names changed for privacy.