

Obligations of Australian health practitioners in relation to advance care planning

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Advance Care Planning Australia

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Glossary

Advance care directive	A written advance care planning document completed and signed by a competent adult (i.e. person-driven document). In Australia, advance care directives are either recognised by specific legislation (statutory advance care directive) or common law (non-statutory advance care directive). Advance care directives can record the person's preferences for future care, and/or record the appointment of a substitute decision-maker to make decisions about the person's health care.
Advance care planning	The process of planning for future health and personal care, whereby the person's values, beliefs and preferences are made known so they can guide decision-making at a future time when that person cannot make or communicate their decisions.
Australia Health Practitioner Regulation Agency (AHPRA)	The national organisation responsible for implementing the National Registration and Accreditation Scheme across Australia, in partnership with the 16 National Boards.
Competency standards	Competency standards describe the knowledge, skills and attitudes needed to perform in a particular occupation.
Health Practitioner	A registered or unregistered health practitioner.
Health Practitioner Regulation National Law	Legislation which not only governs registered health practitioners but also sets out many of the rules and standards that govern how AHPRA must act when they manage notifications, undertake an investigation or take action against a health practitioner. 16 health professions are regulated by nationally consistent legislation under the National Registration and Accreditation Scheme: • Aboriginal and Torres Strait Islander health practice; • Chinese medicine; • chiropractic; • dental; • medical; • medical radiation practice; • midwifery; • nursing (including enrolled nurses); • occupational therapy; • optometry; • osteopathy; • paramedicine; • pharmacy; • physiotherapy; • podiatry; • psychology.

Individual support worker	Categorises several professions that assist individuals in the home, community and/or residential setting. Workers are required to provide person-centred support to people who are ageing and/or have a disability-related condition.
Jurisdiction	A state or territory within Australia.
National Disability Insurance Scheme (NDIS) Code of Conduct	This Code of Conduct applies to all providers and workers who are provided funding under the NDIS. The NDIS Code of Conduct has been developed with reference to other relevant codes in an attempt to maintain consistency and minimise burden on the worker (see Appendix 3).
Profession codes of conduct	Set of rules outlining the norms and responsibilities of, and/or proper practices for, an individual within a specific profession.
Registered health professional	A profession listed within the prescribed definition of the Health Practitioner Regulation National Law.
Unprofessional conduct	Professional conduct of a registered health practitioner that is of a lesser standard than which might reasonably be expected of the health practitioner by the public or the practitioner's professional peers.
Unregistered health professional	A profession not listed within the prescribed definition of the Health Practitioner Regulation National Law. Unregistered health practitioners provide health services but are not subject to the scheme for registration under the Health Practitioner Regulation National Law. They may require a tertiary level qualification, or in the case of an individual support worker, require a certificate or diploma. These unregistered health professionals are subject to the National Code for Health Care Workers which sets out minimum standards for professions providing a health service (see Appendix 2). They are further subject to the codes of ethics and other professional standards imposed by the specific professions.

Introduction

This report describes the review of registered and unregistered health practitioner obligations, protections and exceptions in relation to advance care planning in Australia. The review examines advance care planning health practitioner obligations set out in medical treatment decisions and advance care directive legislation and relevant health profession codes of conduct and/or professional standards. The report describes the protections and exceptions defined within medical treatment decisions and advance care directive legislation.

This report demonstrates the inconsistency in obligations, protections and exceptions within Australian medical treatment decisions and advance care directive legislation, relevant health profession codes of conduct and/or professional standards. It describes the variation between registered and unregistered health practitioners. The findings of this report inform the Advance Care Planning Australia recommendations to improve advance care planning obligations for the registered and unregistered health practitioner workforce inclusive of individual support workers.



Background

Advance care planning is a process of planning for future health and personal care whereby the person's values, beliefs and preferences are made known to guide decision-making at a future time when that person cannot make or communicate their decisions.[1] Australian Governments have committed to addressing the palliative care and advance care planning needs of Australians through the National Palliative Care Strategy 2018.[2] A National Framework for Advance Care Directives also sets advance care planning priorities and actions. A key priority for Australians is to increase the uptake of advance care planning and advance care directives. [3]

Legislation to enable advance care planning exists in all Australian jurisdictions. All jurisdictions have legislative instruments allowing a person to appoint a substitute decision-maker, for a time when he or she loses medical treatment decision-making capacity. All jurisdictions, with the exception of New South Wales and Tasmania, have legislative instruments relating to medical treatment decisions and advance care directives. New South Wales and Tasmania have a policy and advance care directive forms, recognized by common law (i.e. case law of decisions made by the courts). [4]

There are known inconsistencies across jurisdictional medical treatment decisions and advance care directive legislation. There are inconsistencies in terminology, scope, formalities, obligations and recognition that may be affecting advance care planning and advance care directive uptake and understanding. [5]

The uptake of advance care planning and advance care directives is low. In 2014, an Australian national telephone study of 2405 adults found only 14% of participants had an advance care directive.[6] In 2019, an Australian audit of health records of people 65+ years in general practice, hospitals and residential aged care facilities found a 25% prevalence of advance care directives. [7]

Australian research has reported health practitioners' limited understanding and barriers to implementing medical treatment decisions and advance care directive legislation. A 2019 study of

1 'The National Consensus Statement: Essential elements for safe and high-quality end-of-life care', The Australian Commission of Quality and Safety in Health Care (Report, 2019, Australia).
2 'National Palliative Care Strategy 2018', Department of Health (Report, 2019, Australia).
3 Working Group of the Clinical Technical and Ethical Principal Committee of the Australian Health Ministers' Advisory Council. A national framework for advance care directives. Adelaide: Australian Health Ministers' Advisory Council, 2011.
4 Haining C, Nolte L, Detering K, 'Australian advance care planning laws: a lack of nationally consistent personal autonomy and health practitioner obligations regarding medical treatment decisions and end-of-life care' (2019) Austin Health, Melbourne: Advance Care Planning Australia.
5 Ibid.
6 White B, Tilse C, Wilson J, Rosenman L, Strub T, Feeney R, et al. Prevalence and predictors of advance directives in Australia. Internal medicine journal. 2014;44(10):975-80.
7 K Buck et al, 'Prevalence of advance care planning documentation in Australian health and residential aged care services'. 2019 Advance Care Planning Australia, Austin Health, Melbourne.

medical practitioners found that doctors experience decisional conflict when attempting to adhere to advance care directives.[8] A 2017 study reported a low level of compliance with law in advance care directive scenarios despite knowledge of the relevant law.[9] Researchers reported a level of uncertainty amongst health practitioners relating to the legal standing of advance care planning and advance care directives, resulting in professionals becoming reluctant to engage in such planning with their patients.[10] In a 2014 study involving NSW general practitioners and specialists, overwhelmingly both groups reported they would like more advance care planning education.[11] Importantly, a lack of understanding of the law and/or subsequent non-compliance, may have consequences for the patient.[12]

Health and aged care services may be delivered by a range of registered and unregistered health practitioners, and not just medical practitioners. For example, individual support workers are involved in the provision of end-of-life care, particularly for those in residential aged care services. Little is known about the broader multidisciplinary workforces' understanding and compliance with medical treatment decisions and advance care directive legislation. This examination of medical treatment decisions and advance care directive legislation aims to identify the obligations, protections and exceptions set out in medical treatment decisions and advance care directive legislation and relevant health profession codes of conduct and/or professional standards, for registered and unregistered health practitioners including individual support workers.

8 Moore N et al, 'Doctors' perspectives on adhering to advance care directives when making medical decisions for patients: an Australian interview study' (2019) (9)(10). *BMJ open*.
9 White B, Willmott L, Williams G, Cartwright C Parker M. The role of law in decisions to withhold and withdraw life-sustaining treatment from adults who lack capacity: a cross-sectional study. Journal of Medical Ethics 2017; 43:327-333.
10 Detering K et al, 'The impact of advance care planning on end of life care in elderly patients: randomised controlled trial' (2010) 23(340) *BMJ.*
11 Cartwright C, Montgomery J, Rhee J, Zwar N, Banbury A. Medical practitioners' knowledge and self-reported practices of substitute decision making and implementation of advance care plans. Internal Medicine Journal. 2014:44:234-239.
12 White B et al, 'The legal role of medical professionals in decisions to withhold or withdraw life-sustaining treatment: Part 1 (New South Wales)' (2011) 18 *Journal of Law and Medicine* 498, 499-500.

Methods

In December 2019, a rapid review of Australian medical treatment decisions and advance care directive legislation, codes of conduct and professional standards for registered and unregistered health practitioners was undertaken. The review examined the definition of health practitioner, duties, obligations, protections and exceptions of both registered and unregistered health professionals.

The review focused on the current legislation listed in Table 1 and the codes of conduct listed in Table 2 (registered health practitioners), Table 3 (unregistered health practitioners) and Table 4 (individual support workers).

Table 1. Legislative instruments included in review

Jurisdiction	Legislation
Federal	Health Practitioner Regulation National Law 2009
Australia Capital Territory	Medical Treatment (Health Directions) Act 2006 (ACT) Guardianship and Management of Property Act 1991 (ACT) Powers of Attorney Act 2006 (ACT)
New South Wales	Guardianship Act 1987 (NSW) Guardianship Regulations 2016 (NSW)
Northern Territory	Advance Personal Planning Act 2013 (NT) Guardianship of Adults Act 2016 (NT) Mental Health and Related Services Act 1998 (NT) Advance Personal Planning Regulations 2014 (NT)
Queensland	Guardianship and Administration Act 2000 (Qld) Powers of Attorney Act 1998 (Qld)
South Australia	Advance Care Directives Act 2013 (SA) Advance Care Directives Regulations 2014 (SA) Consent to Medical Treatment and Palliative Care Act 1995 (SA) Powers of Attorney and Agency Act 1984 (SA)

	Guardianship and Administration Act 1993 (SA) Health Care Act 2008 (SA)
Tasmania	Guardianship and Administration Act 1995 (Tas) Powers of Attorney Act 2000 (Tas)
Victoria	Medical Treatment Planning and Decisions Act 2016 (Vic) Guardianship and Administration Act 1986 (Vic) Powers of Attorney Amendment Act 2016 (Vic) Powers of Attorney Act 2014 (Vic)
Western Australia	Guardianship and Administration Act 1990 (WA)

Note: Common Law advance care directives apply to all jurisdictions, with the exception of Queensland.

Table 2. Code of conduct standards for registered health practitioners included in review

Registered health practitioner	Code of conduct
Aboriginal and Torres Strait Islander health practice	Aboriginal and Torres Strait Islander Health Practice Board Code of Conduct
Chinese Medicine	Chinese Medicine Board Code of Conduct
Chiropractic	Chiropractic Board Code of Conduct
Dental	Dental Board Code of Conduct
Medical	Medical Board Code of Conduct
Medical Radiation Practice	Medical Radiation Practice Board Code of Conduct
Midwifery	Nursing and Midwifery Board Code of Conduct for Midwives
Nursing (including enrolled)	Nursing and Midwifery Board Code of Conduct for Nurses
Occupational Therapy	Occupational Therapy Board Code of Conduct
Optometry	Optometry Board Code of Conduct
Osteopathy	Osteopathy Board Code of Conduct

Paramedicine	Paramedicine Board Code of Conduct
Pharmacy	Pharmacy Board Code of Conduct
Physiotherapy	Physiotherapy Board Code of Conduct
Podiatry	Podiatry Board Code of Conduct
Psychology	Psychology Board Code of Conduct

Table 3. Code of conduct/professional standards unregistered health practitioners included in review

Unregistered health practitioner	Code of conduct/ professionals standards
Audiology	Audiologists Code of Conduct
Dietetics	Dietitians Association of Australia Code of Professional Conduct
Social Work	Australian Association of Social Workers Practice Standards, 2013
Speech Pathology	Competency- based Occupational Standards for Speech Pathologists (CBOS) entry-level

Table 4. Code of conduct/professional standards for individual support workers included in review

Other health practitioner	Code of conduct/ competency standards
Personal care workers	No specific code of conduct/professional standards
Assistants in nursing	
Personal carers	

It is important to note that any profession that receives funding from the NDIS is subject to the National Disability Insurance Scheme Code of Conduct.[13] In addition, all unregistered health practitioners and individual support workers in this review are subject to the National Code of Conduct for Health Care Workers. See Appendix for both Codes.

13 'NDIS Code of Conduct (Workers)', NDIS Quality and Safeguards Commission Report, 2019, Australia).

Findings

The Health Practitioner Regulation National Law and 24 legislative instruments relating to medical treatment decisions, advance care directives, consent and guardianship were analysed.

The Health Practitioner Regulation National Law provides a list of 16 professions that are considered to be registered health practitioners. Table 5 indicates whether jurisdictional medical treatment decisions and advance care directive legislation uses a definition of health practitioner consistent with the Health Practitioner Regulation National Law.

Table 5. Defining health practitioner by jurisdiction

Jurisdiction	Legislation	Defines health practitioner within the meaning of the Health Practitioner Regulation National Law
Australia Capital Territory	Medical Treatment (Health Directions) Act 2006 (ACT) Guardianship and Management of Property Act 1991 (ACT) Powers of Attorney Act 2006 (ACT)	No
New South Wales	Guardianship Act 1987 (NSW) Guardianship Regulations 2016 (NSW)	No
Northern Territory	Advance Personal Planning Act 2013 (NT) Guardianship of Adults Act 2016 (NT) Mental Health and Related Services Act 1998 (NT) Advance Personal Planning Regulations 2014 (NT)	Yes
Queensland	Guardianship and Administration Act 2000 (Qld) Powers of Attorney Act 1998 (Qld)	No

South Australia	Advance Care Directives Act 2013 (SA) Advance Care Directives Regulations 2014 (SA) Consent to Medical Treatment and Palliative Care Act 1995 (SA) Powers of Attorney and Agency Act 1984 (SA) Guardianship and Administration Act 1993 (SA) Health Care Act 2008 (SA)	Yes
Tasmania	Guardianship and Administration Act 1995 (Tas) Powers of Attorney Act 2000 (Tas)	No
Victoria	Medical Treatment Planning and Decisions Act 2016 (Vic) Guardianship and Administration Act 1986 (Vic) Powers of Attorney Amendment Act 2016 (Vic) Powers of Attorney Act 2014 (Vic)	Yes
Western Australia	Guardianship and Administration Act 1990 (WA)	Yes

Some jurisdictions do not use the definition within the Health Practitioner Regulation National Law. Table 6 provides information on how these legislative instruments define a 'health practitioner'. It is important to note that the term 'health practitioner' is often used interchangeably with 'health professional' and 'health provider'.

Table 6. Jurisdictions with a different definition to the Health Practitioner Regulation National Law

Jurisdictions that do not define health practitioner within the Health Practitioner Regulation National Law	Definition of health practitioner/professional/provider
Australia Capital Territory	Health professional is defined as a doctor or nurse.[14]
New South Wales	No definition provided by statute or common law.
Queensland	Health provider means a person who provides health care, or special health care, in the practice of a profession or the ordinary course of business.[15]
Tasmania	No definition provided by statute or common law.

None of the medical treatment decisions and advance care directive legislation examined, defined unregistered health professionals.

14 *Medical Treatment (Health Directions) Act 2006.*
15 *Powers of Attorney Act 1998.*

Registered health practitioners' obligations, protections and exceptions

The law

There are inconsistencies in health practitioner obligations, protections and exceptions across jurisdictional medical treatment decisions and advance care directive legislation. The obligations on a health practitioner to uphold the person's expressed preferences or values are varied, see Table 7.

However, most jurisdictions specify within legislation that a registered health practitioner should comply with a valid advance care directive. For example, South Australia provides robust obligations in the Advance Care Directive Act 2013 which stipulates that a health practitioner must comply with binding instructions.[16] Similarly, Victoria's Medical Treatment Planning and Decisions Act 2016 specifies that a registered health practitioner may be guilty of unprofessional conduct[17] if they fail to ascertain whether a person has an advance care directive or medical treatment decision-maker before administering medical treatment.[18] See Table 7.

Table 7. Legislative obligations for registered health practitioners

Jurisdiction	Obligations on registered health practitioners in advance care planning
Australian Capital Territory	A health professional must not comply with a health direction unless he or she believes, on reasonable grounds, that: • the direction complies with the legislation; and • the person who made the directive has not revoked it or changed his or her decision since making it.[19] If a health care practitioner becomes aware that a patient in a healthcare facility has made or revoked a health direction, he or she must tell the person in charge of the facility about that and detail the relevant circumstances in which the direction was made or revoked.[20]
New South Wales	An advance care directive must be respected by a health professional if: • made by a capable adult; and • is clear and unambiguous; and

16 *Advance Care Directives Act 2013* (SA) s 36.
17 Unprofessional conduct means professional conduct that is of a lesser standard than reasonably expected of a health practitioner.
18 *Medical Treatment Planning and Decisions Act 2016* (Vic) s 50.
19 *Medical Treatment (Health Directions) Act 2006* (ACT) s 12.
20 *Medical Treatment (Health Directions) Act 2006* (ACT) s 13.

	• is applicable to the situation at hand.[21] The rights of the competent adult will prevail over the State's interest to protect and preserve the health of its citizens.[22] If there is a genuine and reasonable doubt as to the validity of an advance care directive or whether it is applicable to the situation at hand, a health professional should promptly apply to the court, and is permitted to act in accordance with emergency principles in the interim.[23]
Northern Territory	A health care provider is obliged to comply with advance consent decisions in an advance personal plan, unless the Court orders that it be disregarded.[24] When acting in accordance with an advance consent direction, a healthcare provider must: • reasonably believe that the patient has impaired decision-making capacity for the healthcare action; and • rely upon the consent that he or she reasonably believes the patient has given in the advance consent direction.
Queensland	A health provider must comply with an advance health directive, subject to some exceptions.[25] A direction to withhold or withdraw a life-sustaining measure can only operate in the case of a/an: • terminal illness or condition that is incurable or irreversible and is expected to result in death within one year (based on the opinion of the treating doctor and another doctor); • persistent vegetative state; • permanent unconscious state; • severe illness or injury that has no reasonable prospect of enabling the sustainment of life without continued application of life-sustaining measure.[26]

21 *Hunter and New England Area Health Service v A* [2009] NSWSC 761.
22 Ibid [5].
23 Ibid.
24 *Advance Personal Planning Act 2013* (NT) s 31.
25 *Powers of Attorney Act 1998* (Qld) s 36(1).
26 *Guardianship and Administration Act 2000* (Qld) s 76.

South Australia	A health practitioner: • must comply with binding provisions; • should comply with non-binding provisions (as far as reasonably practicable); • must seek to avoid any outcome of intervention the directive maker would wish to avoid (as far as reasonably practicable); • must endeavour to provide healthcare in a manner that is consistent with principles set out in the Advance Care Directives Act 2013 (SA).[27]
Tasmania	The common law position in Tasmania is unclear.
Victoria	Health practitioners must comply with instructional directives concerning the withdrawal or refusal of medical treatments and the administration of a particular medical treatment (provided it is deemed clinically appropriate), unless: • circumstances have changed since the direction was made so the directive is no longer consistent with the person's preferences and values; and • the potential delay caused by an application to VCAT to ascertain whether or not the advance care directive is still applicable would result in significant deterioration of the person's condition.[28] A registered health practitioner may be guilty of unprofessional conduct if they fail to ascertain whether a person has either or both of the following: • advance care directive; • a medical treatment decision maker before administering medical treatment.[29]
Western Australia	A health practitioner is not obliged to comply with an advance health directive if circumstances have arisen that: • the directive maker would not have reasonably anticipated when he or she made the directive; and

27 *Advance Care Directives Act 2013* (SA) s 36.
28 *Medical Treatment Planning and Decisions Act 2016* (Vic) ss 51 & 60.
29 *Medical Treatment Planning and Decisions Act 2016* (Vic) s 50.

	• would cause a reasonable person to change his or her mind about the direction.[30]

Notwithstanding these obligations, most Australian jurisdictions expressly provide protections and exceptions for registered health practitioners who administer medical treatment that is not in accordance with the individual's advance care directive, see Table 8. This is often on the basis that the health practitioner acted reasonably and in good faith, which in this context is taken to mean that the health practitioner acted honestly in the eyes of the law.[31]

The terms 'reasonable grounds', 'good faith' and 'reasonably' appear in every jurisdictional legislation to demonstrate when a registered health practitioner will be justified in disregarding an individual's advance care directive. For example, despite South Australia's extensive list of obligations as seen above, the legislation specifies that a health practitioner will not incur any criminal or civil liability if they acted in good faith and without negligence when disregarding a directive.[32]

Table 8. Legislated protections for registered health practitioners

Jurisdiction	Legislated protections for registered health practitioners in advance care planning
Australian Capital Territory	A health professional who makes a decision that he or she believes, on reasonable grounds, is in accordance with an appropriately prepared health direction, will not be: • in breach of professional etiquette or ethics; or • in breach of a rule of professional conduct; or[33] • incur civil or criminal liability.[34] A health practitioner will not incur any civil or criminal liability, if he/she in good faith relies on the consent given by: • a health attorney for a protected person; or • a person the health professional believes, on reasonable grounds, is a health attorney.[35]

30 *Guardianship and Administration Act 1990* (WA) s 110S(3).
31 See good faith in s 110ZK *Guardianship and Administration Act 1990* (WA).
32 *Advance Care Directives Act 2013* (SA) s 41.
33 *Medical Treatment (Health Directions) Act* 2006 (ACT) s 16(1)-(2).
34 *Medical Treatment (Health Directions) Act* 2006 (ACT) s 16(3).
35 *Guardianship and Management of Property Act* (ACT) s 32L.

New South Wales	Where a health practitioner: • has a genuine or reasonable doubt with respect to the validity or operation of an advance care directive; and • applies promptly to the court for relief he/she is justified, by the emergency principle, for administering the treatment in question until the court gives its decision.[36] A person who does anything in good faith and with reasonable care will not be liable if a claim or action is brought against him or her.[37]
Northern Territory	A health care provider relying on an advance consent decision or the substitute decision maker: • reasonably believing that the adult had impaired decision-making capacity; and • relies on consent given in the advance consent decision or consent given by decision-maker will for all purposes be said to have received consent and will not be liable.[38]
Queensland	A health provider will not incur any liability for not acting in accordance with the advance care directive if the health professional: • does not know about the existence of an advance health directive; [39] • has reasonable grounds to believe that circumstances including advances in medical science have changed to the extent the direction is inappropriate; • has reasonable grounds to believe that an advance health directive is uncertain or is inconsistent with good medical practice; or[40] • A health professional will not be liable by providing health care in accordance with directions given by an individual purporting to have substitute decision-making powers, provided the health provider did not know or ought not have reasonably known that the person did not have the right to exercise the power.[41]

36 *Hunter and New England Area Health Service v A* [2009] NSWSC 761 [88]-[98].
37 *Guardianship Act 1987* (NSW) s 100; Regulation 12.
38 *Advance Personal Planning Act 2013* (NT) ss 45 & 46.
39 *Powers of Attorney Act 1998* (Qld) s 102.
40 *Powers of Attorney Act 1998* (Qld) s 103.
41 *Guardianship and Administration Act 2000* (Qld) s 77.

South Australia	A health practitioner will not incur any criminal liability, civil liability or liability under any professional disciplinary regimes as a result of an act or omission provided: • it was done in good faith; and • without negligence; and • in accordance (or purportedly so) with an advance care directive.[42] A health practitioner may refuse to comply with any direction on conscientious grounds.[43]
Tasmania	If a medical practitioner provides a treatment the patient does not consent to (and it is not a special treatment) he/she must certify that: • the treatment was necessary and will most appropriately promote the person's health and wellbeing; and • the person does not object to the treatment to be carried out. As such following an advance care directive will limit a health professional's liability when consent is not obtained.[44]
Victoria	Where a health practitioner administers or does not administer treatment to a person in accordance with the legislation, he or she will not be: • guilty of an offence; or • liable for unprofessional conduct; or • liable in any civil proceeding; • or liable for contravention of any code of conduct, provided that he or she was acting in good faith and without negligence.[45] Directions provided in advance care directives cannot compel a health practitioner to administer a particular or futile or non-beneficial of medical treatment or medical research procedure.[46]
Western Australia	A health professional will not be under any liability if they act in accordance with the treatment decision provided they:

42 *Advance Care Directives Act 2013* (SA) s 41.
43 *Advance Care Directives Act 2013* (SA) s 37.
44 *Guardianship and Administration Act* 1995 (Tas) s 41(3).
45 Advance Care Directives Act 2013 (Vic) s 52.
46 Medical Treatment Planning and Decisions Act 2016 (Vic) s 8.

	• reasonably believe that the patient is unable to make reasonable judgments; and • rely in good faith on the treatment decision in the advance health directive or made by the patient's guardian.[47]

Profession codes of conduct

14 of the 16 registered health professions have a code of conduct inclusive of the professional behaviours and expectations surrounding the facilitation of advance care planning. This implies there are obligations within the majority of profession codes of conduct to facilitate advance care planning.

In most cases, advance care planning is mentioned explicitly within these professional codes, see Table 9. Although the Optometry Board makes no mention of advance care planning within their code, it does acknowledge that 'patient' also includes substitute decision-makers for those who may lack capacity to make independent decisions.[48] Similarly, the Psychology Board also makes no mention of advance care planning but does acknowledge that those who lack capacity may have a legal authority who can provide consent on their behalf.[49]

The medical profession code of conduct[50] and nursing standards for practice[51] provide practical benchmarks to guide and measure how care should be provided. The specific acknowledgment of legislation, policy and guidelines demonstrates the importance of following the law in these professions. This is especially done well within the Nursing and Midwifery Board Code of Conduct for Nurses which includes the statement: 'facilitate advance care planning and provision of end-of-life care where relevant and in accordance with local policy and legislation'.

47 Guardianship and Administration Act 1990 (WA), s 110ZK.
48 See Optometry Board Code of Conduct.
49 See Psychology Board Code of Conduct.
50 'Good medical practice: a code of conduct for doctors in Australia', Medical Board Australia (Report, 2019, Australia).
51 'Registered nurse standards for practice', Nursing and Midwifery Board AHPRA (Report, 2019, Australia).

Table 9. Registered health practitioner obligation according to codes of conduct

Registered health practitioner	Code of conduct	Obligations within the code to facilitate advance care planning
Aboriginal and Torres Strait Islander health practice	Aboriginal and Torres Strait Islander Health Practice Board Code of Conduct	Yes
Chinese medicine	Chinese Medicine Board Code of Conduct	Yes
Chiropractic	Chiropractic Board Code of Conduct	Yes
Dental	Dental Board Code of Conduct	Yes
Medical	Good Medical Practice: A Code of Conduct for Doctors in Australia	Yes
Medical radiation practice	Medical Radiation Practice Board Code of Conduct	Yes
Midwifery	Nursing and Midwifery Board Code of Conduct for midwives	Yes
Nursing	Nursing and Midwifery Board Code of Conduct for Nurses	Yes
Occupational Therapy	Occupational Therapy Board Code of Conduct	Yes
Optometry	Optometry Board Code of Conduct	No
Osteopathy	Osteopathy Board Code of Conduct	Yes
Paramedicine	Paramedicine Board Code of Conduct	Yes
Pharmacy	Pharmacy Board Code of Conduct	Yes
Physiotherapy	Physiotherapy Board Code of Conduct	Yes
Podiatry	Podiatry Board Code of Conduct	Yes
Psychology	Psychology Board Code of Ethics	No

Unregistered health practitioners and individual support workers' obligations

The law

Medical treatment decisions and advance care directive legislation does not refer to unregistered health practitioners or individual support workers. This could be interpreted as that there are no obligations, protections or exceptions in current legislation that applies to these professions. The obligations of unregistered health practitioners or individual support workers to access and enact a person's advance care directive are unknown, although they provide important end-of-life care.

Profession codes of conduct

The National Code of Conduct for Health Care Workers sets the standards of conduct and practice for all unregistered health practitioners and individual support workers. All unregistered health practitioners and individual support workers are bound by this overarching National Code.

The National Code outlines broad, minimum standards of professional conduct. It refers to appropriate conduct as obtaining consent and accepting the right of clients to make informed choices in relation to their health care. However, it fails to mention any other core elements of advance care planning or related legislation in contrast to that identified within the registered health practitioner codes of conduct.

A current regulatory mechanism for professions that do not adhere to the National Code is through the use of prohibition orders. It is intended that any prohibition order would be listed on a national Register of Prohibition and be mutually recognised across state boundaries.[52] The true severity of this complaints process and whether it is successful in keeping health practitioners accountable is unknown.

No unregistered health practitioner profession codes of conduct make specific mention of advance care planning, see Table 10. There are broad statements in relation to consent, autonomy, active client participation and working within all the relevant legal constraints, including medico-legal responsibilities. The lack of specific regard to advance care planning and end-of-life care creates difficulty in imposing obligations upon these professions.

Furthermore, this review identified that individual support workers do not complete training regarding advance care planning and end-of-life care within their certificate courses core subjects. However,

52 'Final report: Options for regulation of unregistered health practitioners', Australian Health Ministers' Advisory Council 2013 (Report, 2013, Australia).

there are optional elective units within their course where advance care planning is mentioned specifically.[53]

Table 10. Unregistered health practitioner obligation according to code of conduct/professional standards

Unregistered health practitioner	Code of conduct/ professional standards	Obligations within the code to facilitate advance care planning
Audiology	Audiology Code of Conduct	No
Dietetics	Dietitians Association of Australia Code of Professional Conduct	No
Social Work	Australian Association of Social Workers Practice Standards, 2013	No
Speech Pathology	Competency-based Occupational Standards for Speech Pathologists (CBOS) entry level	No

Table 11. Individual support worker obligation according to code of conduct/professional standards

Other health practitioner	Code of conduct/professional standards
Assistants in nursing	No specific code of conduct/professional standards
Personal carers	

53 See element 3 in CHCPA301B Deliver care services using a palliative approach: 'Follow the client's advanced care directives in the care plan' (Certificate III in Individual Support).

Discussion

This report provides new learnings regarding registered and unregistered health practitioner obligations, protections and exceptions in relation to medical treatment decisions and advance care directive legislation and professional codes of conduct and/or standards. Across jurisdictional legislation and professional codes and standards, there is variation and inconsistencies in obligations, protections and exceptions that could be affecting advance care planning uptake and implementation. Health and aged care services are provided by a multidisciplinary workforce, and their obligations to comply with binding advance care directive instructions are inconsistent.

In most jurisdictions it is expected that a registered health practitioner will comply with a valid advance care directive. Language to the effect of 'must comply', 'must be respected' and 'obliged to comply' demonstrates legal and community expectations that health practitioners should respect individual medical treatment preferences. South Australian legislation provides robust obligations on health practitioners, stipulating that a health practitioner must comply with binding provisions, should comply with non-binding provisions, seek to avoid outcomes against the wishes of the directive-maker and endeavour to provide healthcare consistent with the Act.[54]

Common Law advance care directives apply throughout Australian jurisdictions with the exception of Queensland. Common Law findings from NSW uphold a person's right to autonomy, self-determination and advance care directives. Under this rule, the rights of the competent adult will prevail[55] over the State's interest to protect and preserve the health of its citizens. [56] This judgment demonstrates registered and unregistered health practitioner obligation to give effect to the values and preferences of a person's medical treatment preferences.

Notwithstanding these legal obligations, health practitioners are also afforded protections and exceptions under relevant legislation. The terms 'good faith', 'reasonably' and 'reasonable grounds' appear frequently in many jurisdictional legislative instruments to accommodate a change in circumstance that may affect the relevance of the advance care directive. For example, where a health practitioner honestly believes that at the time of creating the directive the individual lacked decision making capacity, was subject to some form of undue influence or circumstances are drastically different from when the directive was first made.[57]

54 *Advance Care Directives Act 2013* (SA) s 36.
55 *Hunter and New England Area Health Service v A* [2009] NSWSC 761 [36].
56 Ibid [5].
57 Escher, M et al, 'Doctors' Decisions When Faced with Contradictory Patient Advance Directives and Health Care Proxy Opinion: A Randomized Vignette-Based Study', *Journal of Pain & Symptom Management* (2015) 49(3), pp. 637–645.

Variation also exists in both registered and unregistered health practitioner profession codes of conduct. A profession code of conduct that could be considered the 'gold standard' is the provision listed within the Nursing and Midwifery Board Code of Conduct for Nurses (see Appendix, Table 1). The code provides a slightly different yet important change in language which obliges the nursing profession to stay informed about current and changing legislation and policy surrounding advance care planning. The degree of specificity in this code and the obligation to stay up-to-date presents a much higher threshold of responsibility than those seen in other professional codes of conduct.

Importantly, this analysis has identified that individual support workers who care for a large number of vulnerable Australians, have no advance care planning obligations or protections specified within relevant legislation or professional codes of conduct. The National Code of Conduct for Health Care Workers does specify to obtain consent and consider individual autonomy and dignity but not facilitate advance care planning.

The inconsistencies relating to registered and unregistered health practitioner obligations, protections and exceptions regarding medical treatment decisions and advance care directive legislation and professional codes of conduct and/or standards should inform policy and legislation reform.

Recommendations

Advance Care Planning Australia proposes the following recommendations which have implications for policy and legislative reform:

Recommendation 1: Redefining 'health practitioner'

Medical treatment decisions and advance care directive legislation and policy should consistently define health practitioner to include registered and unregistered health practitioners. This will help ensure that all health practitioners, including individual support workers understand their obligations and protections under the law.

Recommendation 2: Policy obligations for all health practitioners

The National Framework for Advance Care Planning Documents should place obligations on all health practitioners to uphold a person's binding quality advance care directive. This will promote the uptake of advance care planning nationally and inform future law reform.

Recommendation 3: Profession code of conduct for health practitioners

Profession codes of conduct should place obligations on all health practitioners with a tertiary education. It is recommended that all health practitioner profession codes of conduct define expectations in line with the Nursing and Midwifery Board of Australia code of conduct, which obliges the profession to stay up-to-date with current and changing law and policy.

Recommendation 4: Profession code of conduct for individual support workers

Medical treatment decisions and advance care directive legislation should clearly set out expectations and protections for individual support workers. It is recommended that these professions create profession-specific codes of conduct inclusive of advance care planning. It is recommended that certificate course and subjects are inclusive of advance care planning.

Recommendation 5: Legislated obligations for health practitioners

Medical treatment decisions and advance care directive legislation should place robust obligations on all health practitioners including individual support workers. It is recommended that legislative reform improve obligations (eg. in alignment with South Australian legislation) and the New South Wales Common Law findings, which provide a good balance of health practitioner obligations and protections.

Appendix 1

Table 12. Registered health practitioner obligation according to codes of conduct

Registered health practitioner	Registered health practitioner obligations under code of conduct
Aboriginal and Torres Strait Islander health practice	• Aboriginal and Torres Strait Islander Health Practice Board Code of Conduct ○ for those practitioners involved in care that may prolong life, understanding that practitioners do not have a duty to try to prolong life at all cost but do have a duty to know when not to initiate and when to cease attempts at prolonging life, while ensuring that patients or clients receive appropriate relief from distress ○ accepting that patients or clients have the right to refuse treatment or to request the withdrawal of treatment already started ○ when relevant, facilitating advance care planning
Chinese Medicine	• Chinese Medicine Board Code of Conduct ○ for those practitioners involved in care that may prolong life, understanding that practitioners do not have a duty to try to prolong life at all cost but do have a duty to know when not to initiate and when to cease attempts at prolonging life, while ensuring that patients or clients receive appropriate relief from distress ○ accepting that patients or clients have the right to refuse treatment or to request the withdrawal of treatment already started ○ when relevant, facilitating advance care planning
Chiropractor	• Chiropractic Board Code of Conduct ○ for those practitioners involved in care that may prolong life, understanding that practitioners do not have a duty to try to prolong life at all cost but do have a duty to know when not to initiate and when to cease attempts at prolonging life, while ensuring that patients or clients receive appropriate relief from distress

	○ accepting that patients or clients have the right to refuse treatment or to request the withdrawal of treatment already started ○ when relevant, facilitating advance care planning
Dental	• Dental Board Code of Conduct ○ for those practitioners involved in care that may prolong life, understanding that practitioners do not have a duty to try to prolong life at all cost but do have a duty to know when not to initiate and when to cease attempts at prolonging life, while ensuring that patients or clients receive appropriate relief from distress ○ accepting that patients or clients have the right to refuse treatment or to request the withdrawal of treatment already started • when relevant, facilitating advance care planning
Medical	• Medical Board Code of Conduct ○ Taking steps to manage a patient's symptoms and concerns in a manner consistent with their values and wishes. ○ Understanding the limits of medicine in prolonging life and recognising when efforts to prolong life may not benefit the patient. ○ Understanding that you do not have a duty to try to prolong life at all cost. However, you do have a duty to know when not to initiate and when to cease attempts at prolonging life, while ensuring that your patients receive appropriate relief from distress. ○ Accepting that patients have the right to refuse medical treatment or to request the withdrawal of treatment already started. ○ Facilitating advance care planning.
Medical Radiation Practice	• Medical Radiation Practice Board Code of Conduct ○ for those practitioners involved in care that may prolong life, understanding that practitioners do not have a duty to try to prolong life at all cost but do have a duty to know when not to initiate and when to cease attempts at prolonging life, while ensuring that patients or clients receive appropriate relief from distress

	○ accepting that patients or clients have the right to refuse treatment or to request the withdrawal of treatment already started ○ when relevant, facilitating advance care planning
Midwifery	• Nursing and Midwifery Board Code of Conduct for midwives ○ understand the limits of healthcare in prolonging life, and recognise when efforts to prolong life may not be in the best interest of the woman ○ accept that the woman, has the right to refuse treatment, or to request withdrawal of treatment, while ensuring the woman receives relief from distress ○ facilitate advance care planning and provision of end-of-life care where relevant and in accordance with local policy and legislation
Nursing	• Nursing and Midwifery Board Code of Conduct for Nurses ○ Understand the limits of healthcare in prolonging life, and recognise when efforts to prolong life may not be in the best interest of the person ○ Accept that the person has the right to refuse treatment, or to request withdrawal of treatment, while ensuring the person receives relief from distress ○ Facilitate advance care planning and provision of end-of-life care where relevant and in accordance with local policy and legislation, and ○ Take reasonable steps to ensure support is provided to people, and their families, even when it is not possible to deliver the outcome they desire.
Occupational Therapy	• Occupational Therapy Board Code of Conduct ○ for those practitioners involved in care that may prolong life, understanding that practitioners do not have a duty to try to prolong life at all cost but do have a duty to know when not to initiate and when to cease attempts at prolonging life, while ensuring that patients or clients receive appropriate relief from distress

	○ accepting that patients or clients have the right to refuse treatment or to request the withdrawal of treatment already started ○ when relevant, facilitating advance care planning
Optometry	End-of-life care and advance care planning not explicitly mentioned in code of conduct
Osteopathy	• Osteopathy Board Code of Conduct ○ for those practitioners involved in care that may prolong life, understanding that practitioners do not have a duty to try to prolong life at all cost but do have a duty to know when not to initiate and when to cease attempts at prolonging life, while ensuring that patients or clients receive appropriate relief from distress ○ accepting that patients or clients have the right to refuse treatment or to request the withdrawal of treatment already started ○ when relevant, facilitating advance care planning
Paramedicine	• Paramedicine Board Code of Conduct ○ for those practitioners involved in care that may prolong life, understanding that practitioners do not have a duty to try to prolong life at all cost but do have a duty to know when not to initiate and when to cease attempts at prolonging life, while ensuring that patients or clients receive appropriate relief from distress ○ accepting that patients or clients have the right to refuse treatment or to request the withdrawal of treatment already started ○ when relevant, facilitating advance care planning
Pharmacy	• Occupational Therapy Board Code of Conduct ○ for those practitioners involved in care that may prolong life, understanding that practitioners do not have a duty to try to prolong life at all cost but do have a duty to know when not to initiate and when to cease attempts at prolonging life, while ensuring that patients or clients receive appropriate relief from distress

	○ accepting that patients or clients have the right to refuse treatment or to request the withdrawal of treatment already started when relevant, facilitating advance care planning
Physiotherapy	• Physiotherapy Board Code of Conduct ○ for those practitioners involved in care that may prolong life, understanding that practitioners do not have a duty to try to prolong life at all cost but do have a duty to know when not to initiate and when to cease attempts at prolonging life, while ensuring that patients or clients receive appropriate relief from distress ○ accepting that patients or clients have the right to refuse treatment or to request the withdrawal of treatment already started • when relevant, facilitating advance care planning
Podiatry	• Podiatry Board Code of Conduct ○ for those practitioners involved in care that may prolong life, understanding that practitioners do not have a duty to try to prolong life at all cost but do have a duty to know when not to initiate and when to cease attempts at prolonging life, while ensuring that patients or clients receive appropriate relief from distress ○ accepting that patients or clients have the right to refuse treatment or to request the withdrawal of treatment already started ○ when relevant, facilitating advance care planning
Psychology	End-of-life care and advance care planning not explicitly mentioned in code of conduct

Appendix 2

Table 13. National Code of Conduct for Health Care Workers

National Code of Conduct for Health Care Workers
Clause 1: Healthcare workers to provide services in a safe and ethical manner
Clause 2: Healthcare workers to obtain consent
Clause 3: Appropriate conduct in relation to treatment advice
Clause 4: Healthcare workers to report concerns about treatment or care provided by other health care workers
Clause 5: Healthcare workers to take appropriate action in response to adverse events
Clause 6: Healthcare workers to adopt standard precautions for infection control
Clause 7: Healthcare workers diagnosed with infectious medical conditions
Clause 8: Healthcare workers not to make claims to cure certain serious illnesses
Clause 9: Healthcare workers not to misinform their clients
Clause 10: Healthcare workers not to practice under the influence of alcohol or drugs
Clause 11: Healthcare workers with certain mental or physical impairment
Clause 12: Healthcare workers not to financially exploit clients
Clause 13: Healthcare workers not to engage in sexual misconduct
Clause 14: Healthcare workers to comply with relevant privacy laws
Clause 15: Healthcare workers to keep appropriate records
Clause 16: Healthcare workers to be covered by appropriate insurance
Clause 17: Healthcare workers to display code and other information

Appendix 3

Table 14. National Insurance Disability Scheme Code of Conduct

National Insurance Disability Scheme Code of Conduct
In providing supports or services to people with disability, a Code-covered person must: • act with respect for individual rights to freedom of expression, self-determination and decision-making in accordance with applicable laws and conventions; and • respect the privacy of people with disability; and • provide supports and services in a safe and competent manner, with care and skill; and • act with integrity, honesty and transparency; and • promptly take steps to raise and act on concerns about matters that may impact the quality and safety of supports and services provided to people with disability; and • take all reasonable steps to prevent and respond to all forms of violence against, and exploitation, neglect and abuse of, people with disability; and • take all reasonable steps to prevent and respond to sexual misconduct.

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