

End of life law in Queensland: An overview for aged care

This factsheet explains key laws in **Queensland** relevant to decision-making with older people about medical treatment.

The information in this factsheet is an overview only. For detailed information about end of life law in Queensland visit *End of Life Law in Australia* (<https://end-of-life.qut.edu.au/>).

All content in this factsheet is sourced from *End of Life Law in Australia*.



Consent to medical treatment and health care

For medical treatment or health care to be lawful, a person must consent to it. Consent to treatment is valid if:

- **the person has decision-making capacity ('capacity') to consent,**
- **consent is given freely and voluntarily,** and
- **consent relates to the proposed treatment.**

If treatment is given without consent, a health professional or personal care worker may be liable under civil or criminal law.

In some (limited) situations treatment can be given without consent to a person without capacity. These are:

- Where the treatment is **needed urgently to save the person's life** e.g. in an emergency.
- It is **minor and uncontroversial health care** e.g. taking blood pressure, giving eye drops. The treatment must be necessary and promote the person's health and wellbeing. The person must not object to it.
- **Non-intrusive visual examinations for diagnostic purposes, first aid, or administering non-prescription medication** e.g. paracetamol.

For further information visit:

- the *End of Life Law in Australia* Capacity and consent to medical treatment webpage. (<https://end-of-life.qut.edu.au/capacity>)
- the ELDAC End of Life Law Toolkit factsheet *Consent for minor or routine treatment in aged care*. (<https://www.eldac.com.au/Portals/12/Documents/Factsheet/Legal/Consent-for-minor-or-routine-treatment-in-aged-care.pdf>)

Decision-making capacity

Every adult is presumed to have capacity to make their own medical treatment and health care decisions.

A person will have capacity if they can:

- **understand the nature and effect of the decision,**
- **freely and voluntarily make the decision,** and
- **communicate the decision in some way.**

A person must be given support to enable them to make their own decisions with assistance. For example, providing information to a person in a way they can understand e.g. by adjusting language or using visual aids or technology.

If a **person does not have capacity** (even after supports are provided), consent can be given:

- in a valid **Advance Health Directive,**
- by a **substitute decision-maker,** or
- by the **Queensland Civil and Administrative Tribunal (QCAT)** or the **Supreme Court of Queensland.**

For further information visit the *End of Life Law in Australia* Capacity and consent to medical treatment webpage. (<https://end-of-life.qut.edu.au/capacity#statetercap>)

Advance Health Directives

An **Advance Health Directive** is an instruction about health care made when a person has capacity, to apply in the future when they do not have capacity.

An Advance Health Directive must be made in writing. It can include specific instructions about types of treatment, request or refuse treatment (e.g. refusing a blood transfusion or cardiopulmonary resuscitation), or detail a person's end of life preferences (e.g. wanting to die at home, not in hospital).

A person can also use a Directive to appoint an attorney to make decisions at a future time when the person does not have capacity.

An Advance Health Directive can only be followed once the person no longer has capacity to decide.

Health professionals must follow a valid and applicable Advance Health Directive, unless they consider it is inconsistent with good medical practice. A **direction to withdraw or withhold life-sustaining treatment can only be followed by health professionals in some circumstances** (see *Withholding and withdrawing life-sustaining treatment* below).

For further information visit the *End of Life Law in Australia* Queensland Advance Health Directives webpage. (<https://end-of-life.qut.edu.au/advance-care-directives/state-and-territory-laws/queensland>)

Substitute decision-making

If a **person does not have capacity** and there is no Advance Health Directive, or there is a Directive but it does not apply to the treatment situation, the decision may be made by one of the following **substitute decision-makers** (in order of priority):

- a **guardian** for health matters appointed by QCAT.
- an **attorney appointed by the person under an Advance Health Directive or Enduring Power of Attorney**.
- a **Statutory Health Attorney**.

A **Statutory Health Attorney** is the first of the following people who is able, willing and available to make a decision:

- the person's **spouse** (including de facto partner), where the relationship is close and continuing.
- the person's **unpaid carer**.
- a **close friend or relation** who has a close personal relationship with the adult and a personal interest in their welfare.
- the **Public Guardian**.

Generally a substitute decision-maker's decision should be followed, but the law on decisions about withholding or withdrawing life-sustaining treatment and futile or non-beneficial treatment is different (these laws are discussed below).

For further information about the principles and substitute decision-making visit the *End of Life Law in Australia* Queensland Treatment decisions webpage. (<https://end-of-life.qut.edu.au/treatment-decisions/adults/state-and-territory-laws/queensland>)

Urgent medical treatment

In an emergency, if a **person has capacity** a health professional or personal care worker must obtain the person's consent to treatment.

If a **person does not have capacity**, treatment can be provided without consent (other than withholding or withdrawing life-sustaining treatment – see further below) if it is needed urgently to:

- meet imminent risk to the person's life or health, or
- prevent significant pain or distress, and it is not possible to obtain a substitute decision-maker's consent.

If a person with capacity refuses treatment and/or transfer to hospital, **their refusal should be respected**. This is the case even if treatment is needed to save their life and they will die without it. It is an **assault to provide treatment when the person has refused it**.

Urgent treatment cannot be provided if it has been refused:

- by the person, if they have capacity (this may be done verbally),
- in a valid Advance Health Directive, or
- by a substitute decision-maker.

Treatment needed to save the person's life (except for artificial hydration and nutrition) **can only be withheld or withdrawn without consent if a health professional believes:**

- **the person does not have capacity,**
- **starting or continuing the treatment would be inconsistent with good medical practice,** and
- **the decision to withhold or withdraw treatment needs to happen immediately.**

However, if the health professional knows the person objects to withholding or withdrawing treatment, they cannot proceed without a substitute decision-maker's consent.

For further information visit the *End of Life Law in Australia* Queensland Treatment decisions webpage. (<https://end-of-life.qut.edu.au/treatment-decisions/adults/state-and-territory-laws/queensland#QLDET>)

Legal protection for administering pain and symptom relief

Under the *Aged Care Act 2024* (Cth), older people have a right to equitable access to palliative care when required.

Providing pain and symptom relief is a critical component of palliative care. In some cases, **medication may have the unintended effect of hastening the person's death**. If this occurs, the person who provided the medication **will not be liable for the person's death so long as their intention was to relieve pain or symptoms, and not to hasten death**.

This legal protection is known as the **doctrine of double effect**. It applies when:

- the primary intention is to relieve pain and symptoms, not hasten death,
- the medication is prescribed and administered by or under the direction of a doctor caring for the person (if someone other than a doctor is providing the pain relief it must be ordered by a doctor in writing),
- it is provided in good faith with reasonable care and skill, and
- it is reasonable, considering the person's state and their circumstances i.e. the person is near death.

For further information visit the *End of Life Law in Australia* Legal protection for providing pain and symptom relief webpage. (<https://end-of-life.qut.edu.au/pain-relief>)

Withholding and withdrawing life-sustaining treatment

A **person with capacity can refuse medical treatment, including treatment needed to keep the person alive**. Health professionals must respect a person's refusal and can withhold (not start) or withdraw (stop) life-sustaining treatment, even if this might result in the person's death.

If a **person without capacity has an Advance Health Directive refusing life-sustaining treatment**, it can only be followed (i.e. treatment withheld or withdrawn) if the person:

- has an incurable or irreversible terminal illness or condition, and their treating doctor (and a second doctor) believe the person will die within a year, or
- is in a persistent vegetative state, or
- is permanently unconscious with brain damage so severe there is no reasonable prospect of regaining consciousness, or
- has an illness or injury so severe they will likely always need life-sustaining treatment to survive.

The person must also have no reasonable prospect of regaining capacity.

If a person refuses artificial nutrition or hydration in their Advance Health Directive, it can only be withheld or withdrawn (if it has already been started) if starting or continuing to give the person hydration or nutrition would be contrary to good medical practice.

If a **person without capacity does not have an Advance Health Directive or an attorney appointed under a Directive**, a substitute decision maker can consent to treatment being withheld or withdrawn unless the person objects to this.

Generally health professionals must follow a substitute decision-maker's decision to withhold or withdraw life-sustaining treatment, unless they believe it would not be good medical practice.

For the law on withholding or withdrawing life-sustaining treatment in an emergency from a person who does not have capacity see above (*Urgent medical treatment*).

For further information visit the *End of Life Law in Australia* Queensland Treatment decisions webpage. (<https://end-of-life.qut.edu.au/treatment-decisions/adults/state-and-territory-laws/queensland>)

Futile or non-beneficial treatment

Futile or non-beneficial treatment is often used to describe **treatment which is of no benefit, cannot achieve its purpose, or is not in the person's best interests**. Health professionals decide whether or not treatment is futile on a case-by-case basis.

Health professionals **may withhold or withdraw treatment that is futile or non-beneficial**. They have no obligation to provide treatment that is not in the person's best interests or is inconsistent with good medical practice.

A **person, their family, or substitute decision-maker cannot require or demand that futile or non-beneficial treatment be given**. Their consent is not needed to withhold or withdraw it. A request for futile or non-beneficial treatment in an Advance Health Directive need not be followed.

However where a **person does not have capacity, a substitute decision-maker's consent is needed to withhold or withdraw futile or non-beneficial treatment**.

If a substitute decision-maker does not consent, the Public Guardian or QCAT can authorise the withholding or withdrawal of futile treatment if the treatment is not in the person's interests.

For further information visit the *End of Life Law in Australia* Queensland Treatment decisions webpage. (<https://end-of-life.qut.edu.au/treatment-decisions/adults/state-and-territory-laws/queensland>)

Learn more about end of life law in Queensland:

For further information visit:

- the ELDAC End of Life Law Toolkit for factsheets, mythbusters and cases studies on each topic above. (<https://www.eldac.com.au/Toolkits/End-of-Life-Law>)
- *End of Life Law in Australia*, a website about the law in each Australian State and Territory. (<https://www.end-of-life.qut.edu.au/>)
- End of Life Law for Clinicians, a free online training program for medical practitioners, nurses, and allied and other health professionals about end of life law across Australia. (<https://ellc.edu.au>)