

End of life law in Western Australia: An overview for aged care

This factsheet explains key laws in **Western Australia** 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 Western Australia 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 to be lawful, a person must consent to it. Consent to treatment is valid if:

- **the person has decision-making capacity ('capacity') to consent,**
- **the person consents freely and voluntarily,** and
- **the 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.

If a person does not have capacity, treatment can be given without consent if it is **needed urgently to save the person's life** e.g. in an emergency, and it is not possible to obtain consent from a substitute decision-maker or find out if the person has an Advance Health Directive.

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>)

Decision-making capacity

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

A person will have decision-making capacity if they can make reasonable judgments in relation to the proposed treatment.

Best practice is to provide a person with support to enable them to make their own decisions and participate in decision-making (supported decision-making). 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 decision-making capacity**, consent can be given:

- in a valid **Advance Health Directive**,
- by a **substitute decision-maker**, or
- by the **Supreme Court of Western Australia**.

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. There are two types of Advance Care Directives in Western Australia:

- **common law Advance Care Directives** (made in writing or orally), and
- **statutory Advance Health Directives** (which must be made in writing).

This section relates to statutory Advance Care Directives only.

Advance Health Directives 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).

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

Generally health professionals must follow a valid and applicable Advance Health Directive, unless the person's circumstances have changed since the Directive was made.

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

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, a medical treatment decision may be made by one of the following **substitute decision-makers** (in order of priority):

- an **Enduring Guardian** appointed by the person under an Enduring Power of Guardianship to make treatment decisions.
- a **guardian** appointed by the State Administrative Tribunal (SAT) of Western Australia with power to make treatment decisions.
- a **person responsible**. This is the first of the following people who is at least 18 years of age and able, available and willing to decide:
 - **spouse or de facto partner** if they live with and maintain a close personal relationship with the person,

- **nearest relative** with a close personal relationship with the person (in priority order):
 - **an adult child**
 - **a parent**
 - **sibling**
- **unpaid primary carer,**
- **any other person** with a close personal relationship with the person.

If there is no person responsible available and willing to decide, the SAT may appoint the Public Advocate as guardian.

Substitute decision-makers must act in the person's best interests when making decisions.

Generally a substitute decision-maker's decision should be followed unless treatment is futile or non-beneficial (see *Futile or non-beneficial treatment* below).

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

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 with capacity refuses treatment and/or transfer to hospital for treatment, **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**.

If a person **does not have capacity and it is not possible to find out if a person has made an Advance Health Directive or to obtain a substitute decision-maker's consent**, treatment can be provided without consent if it is needed urgently to:

- save the person's life,
- prevent serious damage to health, or
- prevent significant pain or distress.

Urgent treatment cannot be provided if it has been lawfully 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.

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

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** and will apply when:

- the pain or symptom relief is provided in good faith, with reasonable care and skill, for the benefit of the person, and
- it is reasonable given the person's state at the time and the circumstances e.g. 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 does not have capacity**, a **health professional must follow a refusal of life-sustaining treatment by**:

- the **person, in their Advance Health Directive**, or
- a **substitute decision-maker**,

and withhold or withdraw that treatment.

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

Futile or non-beneficial treatment

Futile or non-beneficial treatment is **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, it is good medical practice for health professionals to involve a person or their substitute decision-maker in treatment decision-making, including when treatment is considered futile.

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

Learn more about end of life law in Western Australia

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://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://ellic.edu.au>)