

End of life law in the Northern Territory: An overview for aged care

This factsheet explains key end of life laws in the **Northern Territory** 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 the Northern Territory 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

For medical treatment and health care to be given, 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
- **consent relates to the proposed treatment.**

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

In some (limited) situations, health care can be given without consent to a person who does not have capacity. These are:

- where treatment is **needed urgently to save the person's life** e.g. in an emergency, and it is not possible to obtain consent from the person or their health care decision-maker.
- where **it is routine treatment** and the person:
 - is consulted about the health care and gives implied consent (e.g. holding out their arm for a blood test), and

- o does not object to the health care.

If, however, the treatment is an ongoing course of treatment, or will cause the person significant bodily intrusion, risk of harm, side effects, or pain or distress, it is **significant treatment requiring consent from a health care decision-maker**.

- when the **person requires palliative care**. This is discussed further below.

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 *Minor 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 health care decisions.

A person will have capacity if they can:

- **understand and retain information regarding the health care decision,**
- **weigh information relevant to the decision, in order to decide,**
- **communicate the decision in some way;** and
- **understanding the effect of the decision.**

If the person has difficulty with any of these, they could have impaired decision-making capacity.

However, a person will have decision-making capacity for medical treatment if they can make a decision with appropriate support (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 capacity, consent can be given:

- in a valid **Advance Personal Plan**,
- by a **health care decision-maker**, or
- by the **Northern Territory Civil and Administrative Tribunal** (NTCAT).

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 Personal Plan

An **Advance Personal Plan** or a common law **Advance Care Directive** about future health care can be made by a person, when they have capacity, to apply when they no longer have capacity. The information below applies only to Advance Personal Plans.

An Advance Personal Plan must be made in writing and appropriately witnessed. It can contain:

- **Advance consent decisions**, where the person consents to or refuses specific types of medical treatment (e.g. a refusal of CPR), and

- **Advance care statements** about the person's views, wishes and beliefs, to help decision-makers decide for a person (e.g. a statement that decisions must be made in accordance with a person's religious beliefs).

It can also appoint a decision-maker for health care decisions..

An Advance Personal Plan can only be followed once the person no longer has decision-making capacity.

An Advance consent decision must be followed by health professionals, unless the NTCAT orders that it be disregarded. This might occur, for example, if the Tribunal decides that the person would not have wanted it to apply in the current circumstances. A decision-maker appointed under an Advance Personal Plan can also disregard an advance care statement on this basis.

For further information visit the *End of Life Law in Australia* Northern Territory Advance Personal Plans webpage. (<https://end-of-life.qut.edu.au/advance-care-directives/state-and-territory-laws/northern-territory>)

Substitute decision-making

If a person **has impaired decision-making capacity** and there is no relevant Advance Personal Plan or decision-maker for health decisions appointed in an Advance Personal Plan, a **health care decision-maker may decide**. This will be the first person on the following list who is willing and able to decide:

- a **guardian** appointed for health care decisions under the Guardianship Act
- a **relative** of the person who is **considered by Aboriginal or other customary law or tradition to be the appropriate person** to be a health care decision-maker
- the person's:
 - **spouse or de facto**
 - **unpaid carer**
 - **child**
 - **parent**
 - **sibling**
 - **friend**

so long as they have a **close and continuing relationship** with the person.

If there is no health care decision-maker willing and able to decide, and no advance consent decision in an Advance Personal Plan, the **Public Guardian** may decide as a last resort.

Generally a health care decision-maker's decision should be followed. There are some limited situations where it may not be followed e.g. if treatment is futile or non-beneficial (see Futile or non-beneficial treatment below).

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

Urgent medical treatment

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

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

If a **person does not have capacity, 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, AND

it is not possible to delay the treatment to obtain consent from the person (if their impaired capacity is temporary) or a health care decision-maker.

Urgent treatment cannot be provided if the health professional knows the person:

- has refused the health care in an advance consent decision in their Advance Personal Plan, or
- gave informed refusal when the person had decision-making capacity.

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

Providing 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 primary intention is to relieve pain and symptoms, not hasten death;
- medication is prescribed and administered by or under the direction of a doctor caring for the person; and
- the person is near death.

A health professional can administer pain relief without consent, and despite an objection from a health care decision-maker, but must first:

- consult with the health care decision-maker, and
- take into account the person's preferences and values.

A health care decision-maker cannot refuse health care that prevents a person from suffering significant pain or distress.

For further information visit the *End of Life Law in Australia* Pain 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 through their **Advance consent decision in an Advance Personal Plan**, or a **health care decision-maker**.

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

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 futile or burdensome.

A person, their family, or health care decision-maker cannot require or demand that futile or non-beneficial treatment be given. Their consent is not needed to withhold or withdraw it. An Advance Personal Plan cannot require that futile treatment be given.

However, it is good medical practice for health professionals to involve a person or their health care decision-maker in treatment decision-making, including when treatment is considered futile.

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

Learn more about end of life law in the Northern Territory

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>)
- the Northern Territory Public Guardian and Trustee. (<https://pgt.nt.gov.au/health-decisions>)
- **End of Life Law in Australia**, a website to assist the community to navigate end of life law, and to access information 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>)

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