

# 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://elc.edu.au>)

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