

# Emergency medical treatment

**There are times when a decision about life-sustaining medical treatment must be made in an emergency. On some occasions there is not enough time to obtain a treatment decision from a person's substitute decision-maker. This factsheet explains the law relating to emergency (or urgent) medical treatment. It also discusses whether a person should be transferred to hospital for emergency treatment.**

## Clarifying the law

This factsheet explains:

- When emergency treatment can be provided
- Whether consent to that treatment is required, and who can consent
- Whether a person can refuse treatment in an emergency
- The law relating to Resuscitation Plans and orders

## When can emergency treatment be provided?

Decisions about emergency treatment occur regularly in aged care, particularly when a person is approaching the end of life. Many of these decisions relate to life-sustaining treatment i.e. treatment that is needed to prolong a person's life. Common examples of this type of treatment in an emergency situation include cardiopulmonary resuscitation, assisted ventilation, and blood transfusions.

In aged care, a decision may also be needed about whether the person should be taken to hospital for emergency treatment (discussed further below).

## When consent cannot be obtained

The law about when emergency treatment can be provided if neither a person nor their substitute decision-maker can consent is complex, and differs between States and Territories.

Generally, it is **lawful for a health professional or aged care worker to provide emergency treatment without consent to a person who does not have capacity if there is an urgent need for treatment e.g. to save a person's life, prevent serious damage to health, or prevent significant pain and distress.**

The treatment given must be necessary to protect the person's life or health at that time.

## When consent can be obtained

It may still **be possible, before emergency treatment is provided, to obtain consent** either from a **person with capacity, or their substitute decision-maker if the person lacks capacity.**

Consent to treatment may also be given before an emergency situation arises e.g. in a person's Advance Care Directive, or noted on a resident's file.

The guardianship and medical treatment decision-making legislation in some States and Territories requires a **health professional to make reasonable efforts (if practical) to find out whether the person has an Advance Care Directive** before giving emergency treatment.

In **South Australia, Western Australia** and the **Northern Territory**, where a person does not have capacity and needs emergency treatment health professionals must **seek consent from the person's substitute decision-maker if it is possible to do so (e.g. a decision-maker can be located and is available and willing).**

Though not required by the legislation of other States and Territories, it is still **good practice to obtain a substitute decision-maker's consent if possible.**

If there is an opportunity to obtain consent and a health professional does not do so, treating the person could result in civil or criminal liability.

For further information about consent to treatment and capacity read the ELDAC factsheet *Capacity and consent to medical treatment*. (<https://www.eldac.com.au/tabid/5270/Default.aspx>)

The law about when emergency treatment can be provided differs throughout Australia. Learn more about the law in your **State or Territory** at *End of Life Law in Australia*. (<https://end-of-life.qut.edu.au/treatment-decisions/adults/state-and-territory-laws>)

## Can emergency treatment be refused?

Emergency treatment **cannot be provided if it has been lawfully refused:**

- by the person themselves if they have capacity,
- in a valid Advance Care Directive, or
- by a substitute decision-maker.

A health professional who provides treatment contrary to a lawful refusal commits an assault on the person.

The guardianship and medical treatment legislation in some States and Territories requires health professionals to consider whether the person has previously refused the emergency treatment.

When a situation is urgent and a health professional does not know whether a refusal of treatment is valid, emergency treatment may be provided while this is being checked.

The law on emergency treatment differs across Australia. Learn more about the law in your **State or Territory** at *End of Life Law in Australia*. (<https://end-of-life.qut.edu.au/treatment-decisions/adults/state-and-territory-laws>)

## Emergency treatment, and transfers to hospital

In emergency situations it is not uncommon for health professionals or aged care workers to be uncertain about **whether or not an aged care resident should receive treatment, and/or be transferred to hospital**. This dilemma may occur when, for example:

- A **person with capacity** states they do not want to go to hospital, and/or refuses treatment.
- A **person lacks capacity** and their substitute decision-maker:
  - demands treatment be provided, despite an earlier decision that treatment should not be given; and/or
  - instructs an aged care facility to transfer the resident to hospital for treatment, despite previously deciding the resident should not be transferred.

## REMEMBER!

Hospital transfers and treatment provided against the wishes of a person (or which is not in their best interests) may result in unwanted, burdensome or non-beneficial treatment, and can cause distress to the person, their family, and health professionals.

Treatment against a person's wishes may be an assault and can also lead to criminal or civil liability for the health professionals involved.

## What you can do

Know how to act in an emergency situation by doing the following:

### For Aged Care facilities

- **Have a conversation about Advance Care Planning** with the person or their substitute decision-maker upon the person entering aged care.
- **Discuss what treatment the person wants or does not want** if an emergency situation arises.
- If the person wants to **document their end of life decision, learn how this can be done** by reading the *ELDAC Advance Care Directives factsheet* (<https://www.eldac.com.au/tabid/4968/Default.aspx>) or visit *Advance Care Planning Australia* (<https://www.advancecareplanning.org.au/#/>).
- **If the person already has Advance Care Planning documentation** (e.g. an Advance Care Directive or Resuscitation Plan) **ensure it is properly recorded and can be easily located** by (or is made known to) staff.

### For aged care workers and General Practitioners

- **Know your workplaces' policies and procedures** in relation to emergency situations.
- **Know if the residents you care for have an Advance Care Directive, a Resuscitation Plan, and/or substitute decision-maker**, and what the document says about treatment.
- **Respect the person's treatment decision.** Remember that it is lawful for a person with capacity to refuse to go to hospital or to receive life-sustaining treatment even if it will result in their death.

- **Know what the law says about providing treatment** by reading the following *ELDAC Legal Toolkit factsheets* (<https://www.eldac.com.au/tabid/4902/Default.aspx>):

- Capacity and consent to medical treatment
- Advance Care Directives
- Substitute decision-making
- Withholding and withdrawing life-sustaining medical treatment
- Medication for pain and symptom relief for people with a life-limiting illness
- Futile or non-beneficial treatment
- Managing disputes.

### Resuscitation Plans and the law

Some States and Territories have **forms to guide clinical decision-making about cardiopulmonary resuscitation (CPR) in emergencies**. Examples include Resuscitation Plans (New South Wales) and Acute Resuscitation Plans (Queensland).

These forms are generally completed by hospital clinicians (following discussions with a person or their substitute decision-maker while a person is in hospital) to communicate whether emergency CPR would be futile or burdensome, or whether the person does not want that treatment.

If a resident has a Resuscitation Plan or similar order which refuses treatment, **whether or not you are required to follow it will depend on the laws of your State or Territory**. For more information read the *ELDAC Advance Care Directives factsheet*. (<https://www.eldac.com.au/tabid/4968/Default.aspx>)

### If you are unsure about following a Resuscitation Plan, ask questions!

The law in this area can be complex. If you are unsure about whether or not you should follow a Resuscitation Plan:

- **Aged care workers:** Discuss your concerns with your manager or the practice nurse. They may wish to seek legal advice about the appropriate course of action.
- **General Practitioners:** Seek advice from your medical insurer or your medical defence organisation.
- **Find out more about Resuscitation Plans in your State or Territory** by reading the *ELDAC Legal Toolkit Resuscitation Plan guidelines and resources*. (<https://www.eldac.com.au/tabid/5280/Default.aspx>)

### Key points to remember

1. Although the law differs between States and Territories, generally emergency treatment can be given without consent if neither the person nor their substitute decision-maker can provide consent and there is an urgent need for the treatment e.g. to save the person's life, prevent serious damage to health, or prevent significant pain or distress.
2. The law in South Australia, Western Australia and the Northern Territory requires that consent to emergency treatment be sought from a substitute decision-maker if possible (e.g. where a decision-maker is available). It is good clinical practice in all States and Territories to seek consent from a substitute decision-maker if they are available.
3. In some situations it may still be possible to obtain consent to emergency treatment e.g. from a person with capacity. If a health professional could have obtained consent and did not, they may be liable under civil or criminal law.
4. Emergency treatment can be lawfully refused either by a person with capacity; in an Advance Care Directive; or by a person's substitute decision-maker.
5. A person may have a Resuscitation Plan which provides instructions about resuscitation in an emergency. The law on this is complex and will depend on the law in each State and Territory.

## Myth-busters: Emergency medical treatment

### **Myth 1: Emergency treatment cannot be provided to a person who lacks capacity unless a substitute decision-maker consents.**

**No.** *If a person does not have capacity, and it is not possible to obtain consent from the person's substitute decision-maker, the law allows emergency treatment to be given without consent if it is needed urgently to save a person's life, prevent serious damage to health, or prevent significant pain and distress.*

### **Myth 2: A health professional can provide emergency treatment to a person with capacity without their consent.**

**No.** *If a person has capacity, a health professional or aged care worker must obtain consent from the person prior to providing that treatment, even in an emergency situation. It is only if consent is not possible (for example, the delay to obtain consent would threaten the person's life) that treatment can be given without consent.*

### **Myth 3: If a person lacks capacity and requires emergency treatment in hospital to save their life, a health professional or aged care worker must arrange to transfer them to hospital for treatment**

**No.** *A person is able (when they have capacity) to refuse treatment, including life-sustaining treatment, even if it will result in their death. A person is also able to refuse to go to hospital if they do not want to receive treatment.*

*If a person lacks capacity, a decision about transfer will depend on:*

- *whether the person's preferences about hospital transfer or treatment are known (e.g. documented in an Advance Care Directive, or previously stated), or*
- *if they have a substitute decision-maker, the decision of that person.*

*The law in Victoria is different. There, consent is not required to transfer a person to hospital in an emergency.*

*If the person who lacks capacity has previously decided they do not want to receive treatment, their decision should be respected.*

*If it is not possible to obtain consent to treatment from either a person or their substitute decision-maker, the law allows emergency treatment to be given to save the person's life, prevent serious damage to health, or prevent significant pain and distress. In this case a hospital transfer may occur if it is necessary to enable the person to receive treatment (so long as they haven't previously refused being transferred to hospital).*