Withholding and Withdrawing Life-Sustaining Medical Treatment

Decisions to withhold or withdraw life-sustaining medical treatment are common in end of life and palliative care. Sometimes they are made by the person themselves (if they have decision-making capacity), and sometimes they are made on behalf of the person (if they no longer have decision-making capacity). This factsheet explains the law on withholding and withdrawing on life-sustaining treatment.

Clarifying the law

This factsheet explains:

- What is life-sustaining treatment
- When a decision to withhold or withdraw life-sustaining treatment can be made
- Who can make the decision
- When the decision must be followed

What is life-sustaining treatment?

'Life-sustaining treatment' is treatment that is needed to prolong a person's life. Examples include cardiopulmonary resuscitation, artificial hydration and nutrition, artificial ventilation, and in some circumstances, antibiotics and blood transfusions.

When is it lawful to withhold or withdraw treatment?

A decision to withhold or withdraw treatment is a common feature of medical practice when a person is approaching the end of life. The law that governs this practice differs depending on whether the person has capacity to make treatment decisions.

Where the person has capacity

A person with capacity may refuse any medical treatment, even if it is needed to keep the person alive. **It is lawful for a health professional to withhold or withdraw treatment from a person with capacity who has refused that treatment**. In fact, a health professional who provides treatment contrary to a refusal will have committed an assault on the person.

Where the person does not have capacity

When a person does not have decision-making capacity, a decision to withhold or withdraw life-sustaining treatment can still be lawful in some cases. These include:

1. When the person has a valid **Advance Care Directive which refuses that treatment**.
2. A **decision made by the person's substitute decision-maker** to withhold or withdraw treatment. The law on this is not the same throughout Australia. It is important to **consult the guardianship and medical treatment legislation in your State and Territory** (https://end-of-life.qut.edu.au/treatment-decisions/adults/state-and-territory-laws) to determine when a substitute decision-maker can make this kind of decision.
3. **When providing the treatment would not be in the person's best interests**. This is sometimes referred to as treatment that is futile or non-beneficial.

   An example of this kind of treatment may be the artificial nutrition or hydration of a person in the final stages of dementia who can no longer swallow.

Learn more about the law on withholding and withdrawing treatment 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)

Decision-making about life-sustaining treatment is discussed further in the **End of Life Law Toolkit's** *Advance Care Directives* (https://www.eldac.com.au/Toolkits/End-of-Life-Law/Advance-Care-Directives/Factsheet) and *Substitute Decision-Making* (https://www.eldac.com.au/Toolkits/End-of-Life-Law/Substitute-Decision-Making/Factsheet) **factsheets**.

Shared decision-making can achieve consensus between individuals, families and health professionals about treatment and goals of care, and prevent conflict about withholding or withdrawing treatment.

This process involves '*discussion and collaboration between an older person and their health care provider. It is about bringing together the consumer's values, goals and preferences with the best available evidence about benefits, risks and uncertainties of treatment, in order to reach the most appropriate healthcare decisions for that person*'.

Where the person does not have capacity, these discussions should occur with the person's family or substitute decision-maker.

Learn more at the *Australian Commission on Quality and Safety in Health Care*. (https://www.safetyandquality.gov.au/our-work/partnering-consumers/shared-decision-making)

Does a decision to withhold or withdraw treatment have to be followed?

Generally a **health professional must follow a decision to withhold or withdraw treatment** made:

- by a **person who has capacity**,
- **in a valid Advance Care Directive** (made when the person had capacity), or
- by a **person's substitute decision-maker**.

If they do not, a health professional could be liable under the criminal or civil law, and subject to disciplinary sanction.

However, generally a **health professional does not have to provide treatment that they consider is of no benefit, not in the person's best interests, or futile**, even when it is demanded by a person or their substitute decision-maker.

The law is different in Queensland when the person does not have capacity and their substitute decision-maker is wanting treatment.

Learn more about the law in Queensland at *End of Life Law in Australia* (https://end-of-life.qut.edu.au/treatment-decisions/adults/state-and-territory-laws/queensland), or in the **End of Life Law Toolkit factsheet** *Futile or Non-Beneficial Treatment*. (https://www.eldac.com.au/Toolkits/End-of-Life-Law/Futile-or-Non-Beneficial-Treatment/Factsheet).

Disputes about withholding or withdrawing treatment

Sometimes disputes arise between the person, health professionals, families and substitute decision-makers about whether treatment should be withheld or withdrawn.

In these situations early, proactive communication can prevent conflict from escalating. It is rare for the legal system to become involved, and most conflict can be managed within the aged care setting.

Learn how to resolve disputes in this kind of situation in the **End of Life Law Toolkit's factsheet** *Managing Disputes about Medical Treatment Decision-Making*. (https://www.eldac.com.au/Toolkits/End-of-Life-Law/Managing-Disputes-about-Medical-Treatment-Decision-Making)

Key points to remember

1. Decisions about withholding or withdrawing life-sustaining treatment are common when caring for people who are approaching the end of life.
2. A person who has decision-making capacity can lawfully refuse treatment, even if it is needed to keep them alive. Such a refusal should be followed. The same is generally the case if the person refuses treatment in an Advance Care Directive they made when they had capacity.
3. If the person does not have capacity, their substitute decision-maker can, in some cases, decide to withhold or withdraw life-sustaining treatment. The law on this depends on the guardianship and medical treatment legislation in each State and Territory.
4. A health professional may be liable under the criminal or civil law if they do not comply with a request to withhold or withdraw life-sustaining treatment.
5. A health professional generally has no duty to provide futile or non-beneficial treatment, even if it is demanded by a person, their family or substitute decision-maker.

Mythbusters: Withholding and Withdrawing Life-Sustaining Treatment

Myth 1: A person or their substitute decision-maker cannot refuse treatment needed to keep the person alive

No. *The law allows all adults with capacity to decide what is, or is not done to their bodies. They can consent to or refuse medical treatment. Therefore, a person can refuse medical treatment even if that treatment is needed to keep them alive.*

Myth 2: A health professional who withholds or withdraws life-sustaining treatment performs voluntary assisted dying

No. *A health professional does not perform voluntary assisted dying (VAD) by withholding or withdrawing treatment.*

Withholding and withdrawing life-sustaining treatment is part of mainstream medical practice. It involves stopping (or not providing) treatment in situations where there is no legal requirement to do this e.g. because the person or their substitute decision-maker has refused treatment, or because treatment would be of no benefit to the person. It will be lawful so long as any necessary consents are obtained.

VAD is different in law and practice to withholding and withdrawing life-sustaining treatment. VAD occurs only when a person makes a clear request for VAD and is found to be eligible by an authorised medical practitioner. It involves the administration of a substance (either by the person themselves or by a health practitioner) which ends the life of the person.

In all States, a person can only be eligible for VAD if they:

- *have a terminal illness, disease or medical condition,*
- *are expected to die within six months, or 12 months if they are in Queensland or have a neurodegenerative condition; and*
- *meet all other eligibility criteria.*

VAD is lawful only if it occurs in accordance with each States' VAD laws. Currently VAD is not lawful in the Northern Territory or the Australian Capital Territory (though VAD laws have been passed in the ACT and will commence on 3 November 2025).

Learn more in the End of Life Law Toolkit factsheet *Overview of Voluntary Assisted Dying*. (https://www.eldac.com.au/Toolkits/End-of-Life-Law/Voluntary-Assisted-Dying/Overview)