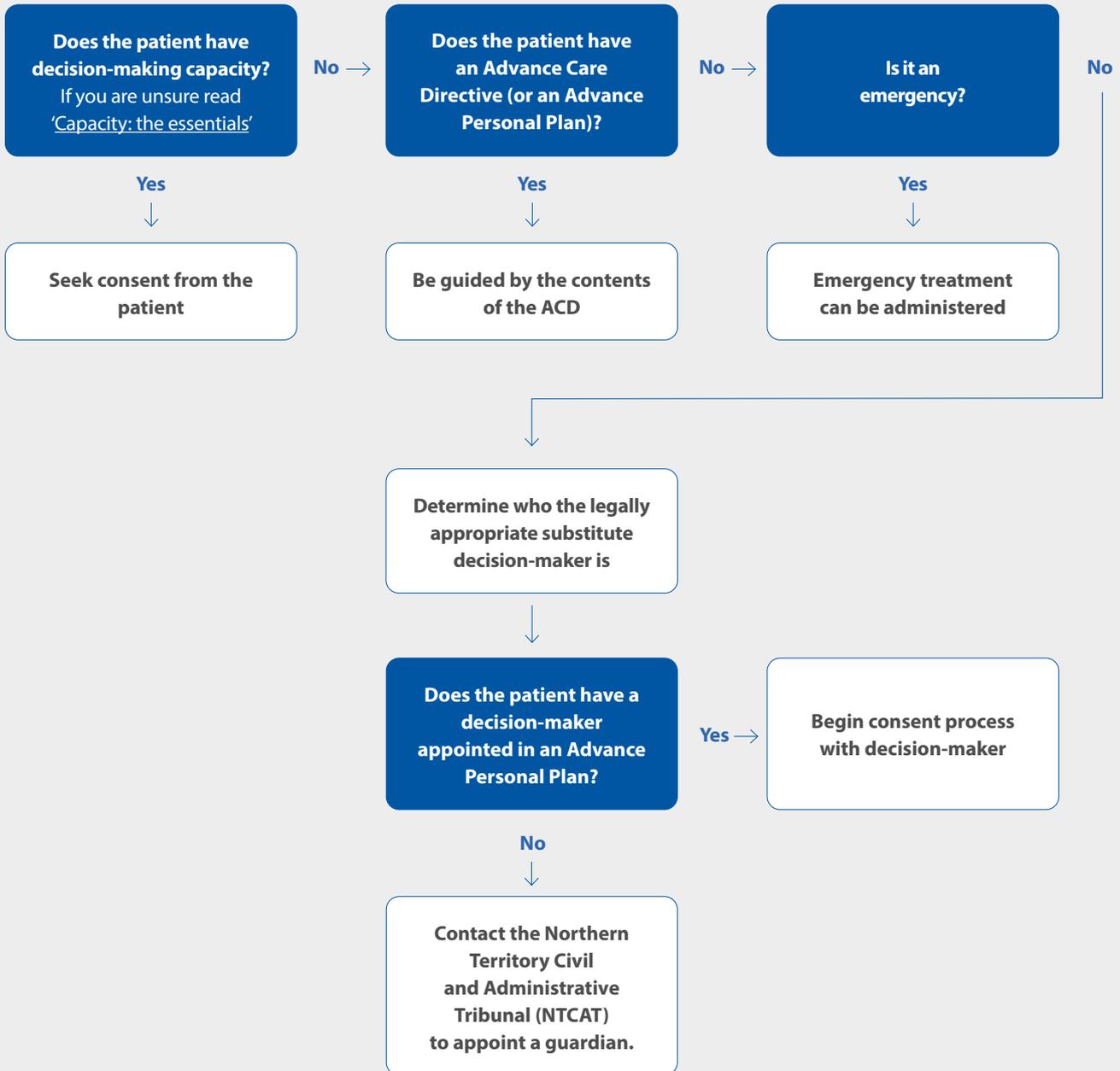


Capacity: Substitute decision-makers for health care

Northern Territory

Many doctors will encounter situations where there is a need to provide care for a patient who has limited or no capacity to make health care decisions for themselves. For these situations, the law has established mechanisms for you to seek consent to provide treatment. It is your legal obligation to understand which person, document or institution to turn to in these circumstances. Use this decision-making flowchart to assist you.



Unlike other states and territories in Australia, the Northern Territory does not recognise a 'default' decision-maker for patients with limited or no capacity to make health care decisions for themselves.

Emergencies

You should assess if the decision needs to be made urgently. Where the patient is unable to give consent, treatment should be provided if it is required to save a person's life or prevent serious injury to the patient's health, subject to any guidance in an advance health directive that is in place.

Supported decision-making

Although you may have determined that the patient's capacity is limited, they may be capable of making their own decisions with appropriate support. There is increasing recognition of the concept of 'supported decision-making'. Rather than substituting another person into the role of 'decision-maker', the person receives assistance from a support person with understanding options, working out what their preference is, and communicating the decision. If a person has capacity to make a decision with support, then the person's decision is final even if it conflicts with their supporter's judgement. This allows the person with disabilities to exercise their autonomy in decision-making to the greatest extent possible.

The concept and terminology related to supported decision-making are interpreted slightly differently depending on the organisation or state or territory where you provide care. You should check your organisation's policies for specific information to help determine your obligations to your patient and their appointed support person.

Advance care directives (ACDs)

An advance care directive is a formal record of a person's preferences for future care if they lose capacity and therefore cannot provide consent to medical treatment. If your patient does not have capacity you should explore whether they have an ACD. You must refer to an ACD if there is one.

The Northern Territory recognises two kinds of ACDs. The first one is an expression of wishes by the patient for their future care. This must have been made when the patient had decision-making capacity. There is no set form and it may come, for example, as a written document (such as a letter) or verbal instructions to a partner or relative.

A more formal way that a person in the Northern Territory can record their wishes for future care is through an Advance Personal Plan (APP). An APP can include 'advance consent decisions', which includes consent or refusal of specific treatment. An APP can also include 'advance care statements' which are less specific than a decision, but can still help guide substitute decision-making. As an example, a person may request that decisions are made in accordance with their religious beliefs. Finally, APPs may appoint a particular person to be their substitute decision-maker to make decisions on their behalf if they lose capacity.

There is a [form](#) to assist patients draft APPs to help ensure the APP meets the formal requirements. An ACD or APP can be added to a patient's My Health Record so that it is visible to their treating doctors.

The laws regarding ACDs are different across the country so it is important to make sure you understand the requirements where you practise. For more information, forms and resources for practitioners in the Northern Territory or any other state or territory, please visit [QUT End of Life Law](#) and [Advance Care Planning Australia](#).

Determining the legally-appropriate substitute decision-maker

It is the responsibility of the doctor to identify who the correct substitute decision-maker is. Unlike other states and territories, the Northern Territory does not recognise a 'default' decision-maker. As illustrated in the flowchart, it is not automatically a patient's next of kin.

Decision-making principles

A substitute-decision-maker must make decisions in accordance with an advance care statement. Where one does not exist, the decisions should be made in a way that the patient would have made. This would include, considering the patient's previously stated views and wishes and consulting with people who might have that sort of information. If this information cannot be ascertained the decision-maker must act in the patient's best interests by making decisions to provide appropriate care.

Types of decisions

A decision-maker appointed in an APP may make decisions based on the decisions or statements based in that document. A guardian can make the decisions that the patient could have lawfully made, provided that is the authority granted to them by NTCAT.

Dealing with conflict

There may be times where conflict arises about the decisions of the substitute decision-maker, from family members or people close to the patient. There may be differences of opinion or you or someone else may suspect that the patient is or was subjected to undue influence. People have different views on autonomy and how it should be respected. In these situations of conflict, we recommend that you call Avant or seek legal advice. You may need to approach Office of the Public Guardian or the NTCAT to intervene.

Additional resources

For more information on assessing capacity, please see the [Avant factsheet: Capacity: the essentials](#).

For information on advance personal plans and guardianship in the Northern Territory please visit the [Office of the Public Guardian](#).

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