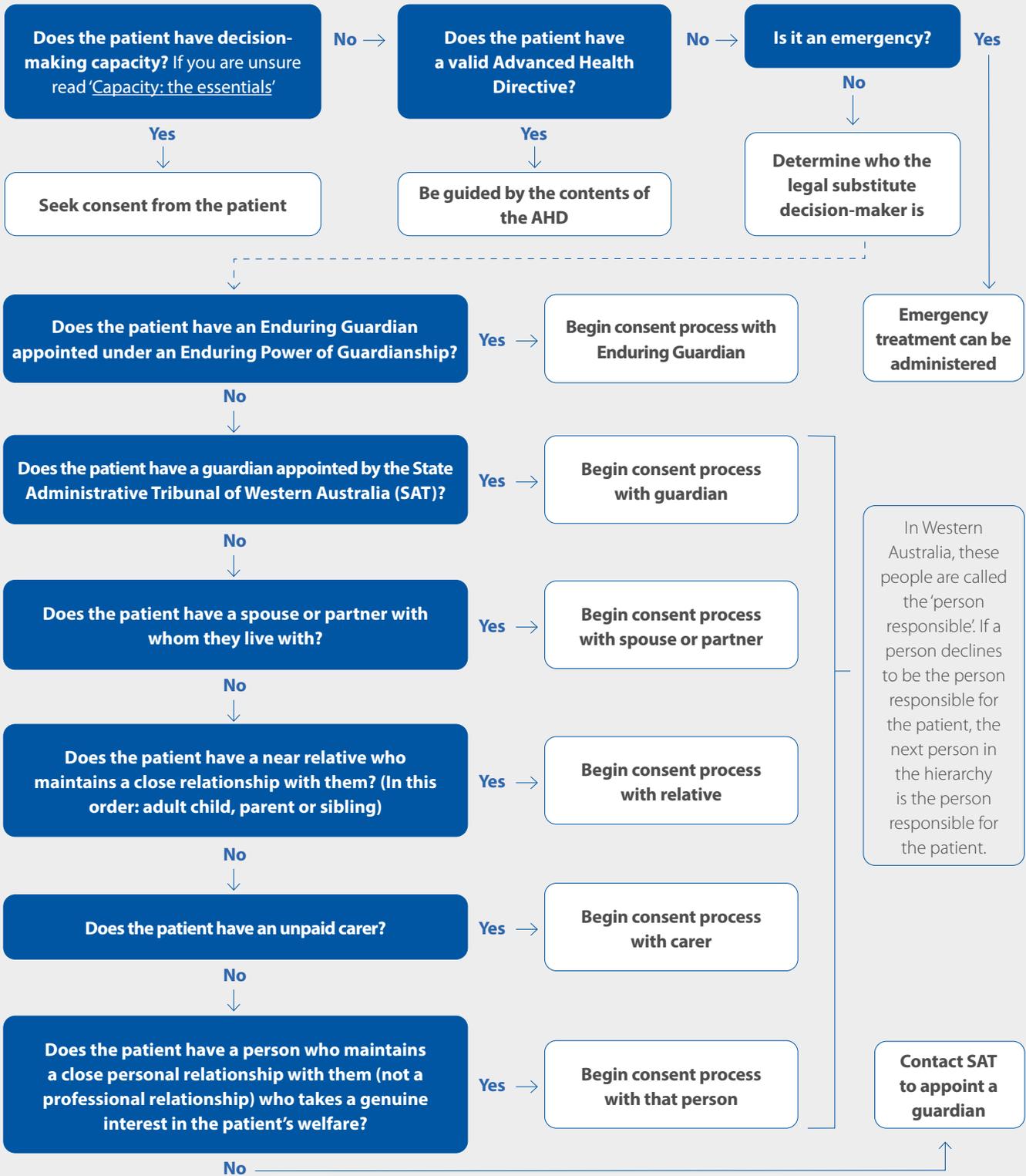


Capacity: Substitute decision-makers for health care

Western Australia

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.



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 support person'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 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 health directives (AHDs)

An advance health 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. It can also outline what sorts of treatments that the patient would refuse. It includes medical or surgical treatment, including palliative care and life-sustaining treatment. If your patient does not have capacity, you should explore whether they have an AHD. You must refer to an AHD if there is one.

The laws regarding AHDs are different across the country so it is important to make sure you understand the requirements where you practise. In Western Australia, an AHD must comply with specific regulations. To help ensure the validity of an AHD, patients should complete the [form](#) provided by the Department of Health. An AHD can be added to a patient's My Health Record so it is visible to their treating doctors.

The laws regarding AHDs 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 Western Australia or any other state or territory, please visit [QUT End of Life Law for Clinicians](#) and [Advance Care Planning Australia](#).

Determining the legally-appropriate substitute decision-maker

There is a hierarchy for identifying the patient's substitute decision-maker for a discussion about treatment options. This hierarchy is important to consider if that patient loses capacity and there is not a valid AHD in place. Each state and territory has different legislation that outlines who is the correct substitute decision-maker for these health care decisions. In Western Australia, this person is called the 'person responsible'.

It is the responsibility of the doctor to identify who the correct person responsible is. As illustrated in the flowchart, it is not automatically a patient's next of kin.

Decision-making principles

A person responsible should act in the patient's best interests. The goal is to give the patient the best opportunity of having their health promoted and maintained in a way that they would have wanted. A person responsible should be guided by what they believe the patient would have wanted, not what the decision-maker themselves might want in the same situation.

Types of decisions

In Western Australia, a person responsible can make most health care decisions, including consenting to or continuing life-sustaining treatment and palliative care. Persons responsible cannot make decisions about sterilisation.

The decisions an Enduring Guardian or guardian can make will depend on the powers granted to them in the Enduring Power of Guardianship or by the SAT.

Dealing with conflict

There may be times where conflict arises about the decisions of the substitute decision-maker, from other 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 the SAT to intervene.

Additional resources

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

For information on AHDs and substitute decision-makers for health care in Western Australia please visit [Office of the Public Guardian](#).

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