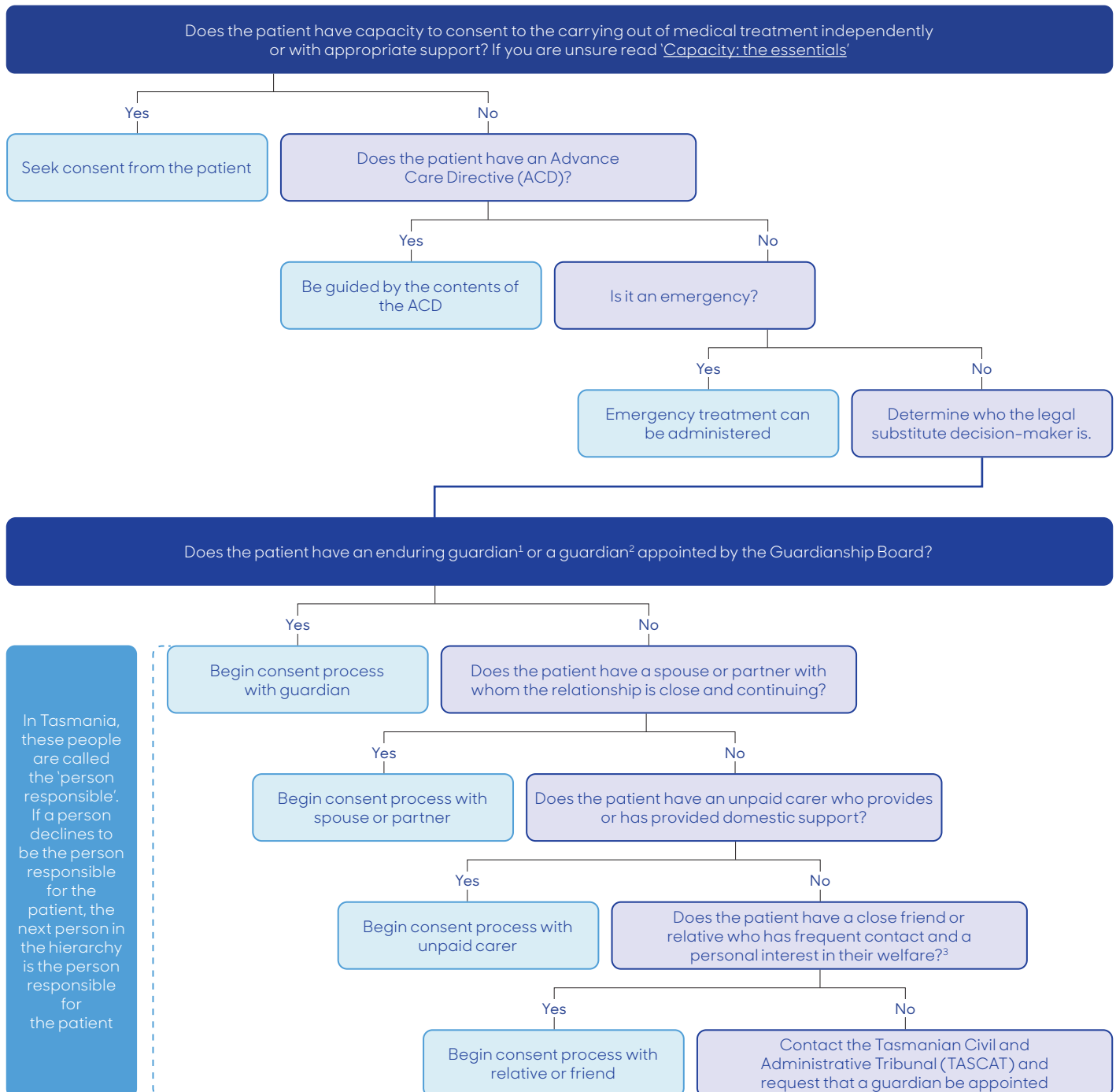


Substitute decision-makers for healthcare Tasmania

You may need to provide care for a patient who has limited or no capacity to make healthcare decisions for themselves. For these situations, the law has established mechanisms for you to seek consent to provide treatment. You need to understand which person, document or institution to turn to in these circumstances. Use this decision-making flowchart to assist you.



¹ An enduring guardian is appointed by the patient

² A guardian is appointed by the tribunal

³ Family member must not be receiving remuneration for any services they provide (apart from the carers pension)

Emergencies

You should assess whether urgent treatment is required. Where the patient is unable to give consent, treatment may be provided without consent if it is necessary to save life, prevent serious harm to the patient's health, or relieve significant pain or distress (other than in the case of special treatment).

Where known, any applicable Advance Care Directive (ACD) or previously expressed wishes of the patient should be taken into account.

Advance Care Directives

An ACD is a record of a person's preferences for future healthcare if they lose capacity.

An ACD is only valid if it was made when the person had decision-making capacity and understood the nature and effect of the document.

If your patient does not have capacity, you should take reasonable steps to determine whether an ACD exists and whether it applies to the decision being considered.

An ACD may include refusals of specific treatments as well as statements of values and preferences to guide decision-making. These should be taken into account and followed where valid and applicable.

In Tasmania, an ACD does not need to be in a prescribed form, although a form is available to assist in preparing one.

Decision-maker

In Tasmania, if a patient does not have capacity, you will need to identify the appropriate person to make decisions on their behalf. This is not automatically the patient's next of kin.

A person may appoint an enduring guardian to make decisions about their personal and health matters if they lose capacity. An enduring guardian is appointed by the patient and must act within the authority granted in the appointing document.

A guardian may also be appointed by the Guardianship and Administration Board to make decisions on behalf of a patient who lacks capacity.

If there is no appointed enduring guardian or tribunal-appointed guardian, consent may be provided by the person responsible. This is determined according to a statutory hierarchy. If a person declines to act as the person responsible, the next person in the hierarchy becomes the person responsible.

A person responsible may include a spouse or partner, an unpaid carer, or a close friend or relative. A person will generally not be considered if they are receiving remuneration for services they provide to the patient (other than a carer's pension).

Tasmanian law also recognises Aboriginal and Torres Strait Islander kinship relationships when determining who is the appropriate decision-maker.

Limits on decision-making

In Tasmania, a decision-maker can consent to most medical treatment on behalf of a patient.

A person responsible can provide consent to treatment. However, the legislation does not give a person responsible (who is not a guardian) an express power to refuse treatment or withdraw consent. In practice, they may withhold consent, which may have the same effect as refusing treatment.

A decision-maker cannot consent to certain 'special' treatments, including sterilisation, termination of pregnancy and organ donation. Approval for these treatments must be obtained from the Guardianship and Administration Board.

The scope of a decision-maker's authority may also be limited by the terms of their appointment. An enduring guardian or tribunal-appointed guardian must act within the powers granted in the appointing document or order.

Additional resources

For more information on

- assessing capacity, please see the Avant factsheet: [Capacity: the essentials](#)
- advance care planning and directives in Tasmania, including forms and guidance, see [Tasmanian Department of Health website](#)
- advance care planning in all states and territories, see [QUT End of Life Law for Clinicians](#) or [Advance Care Planning Australia](#)

For more information or immediate medico-legal advice, call us on **1800 128 268, 24/7** in emergencies.
avant.org.au/mlas