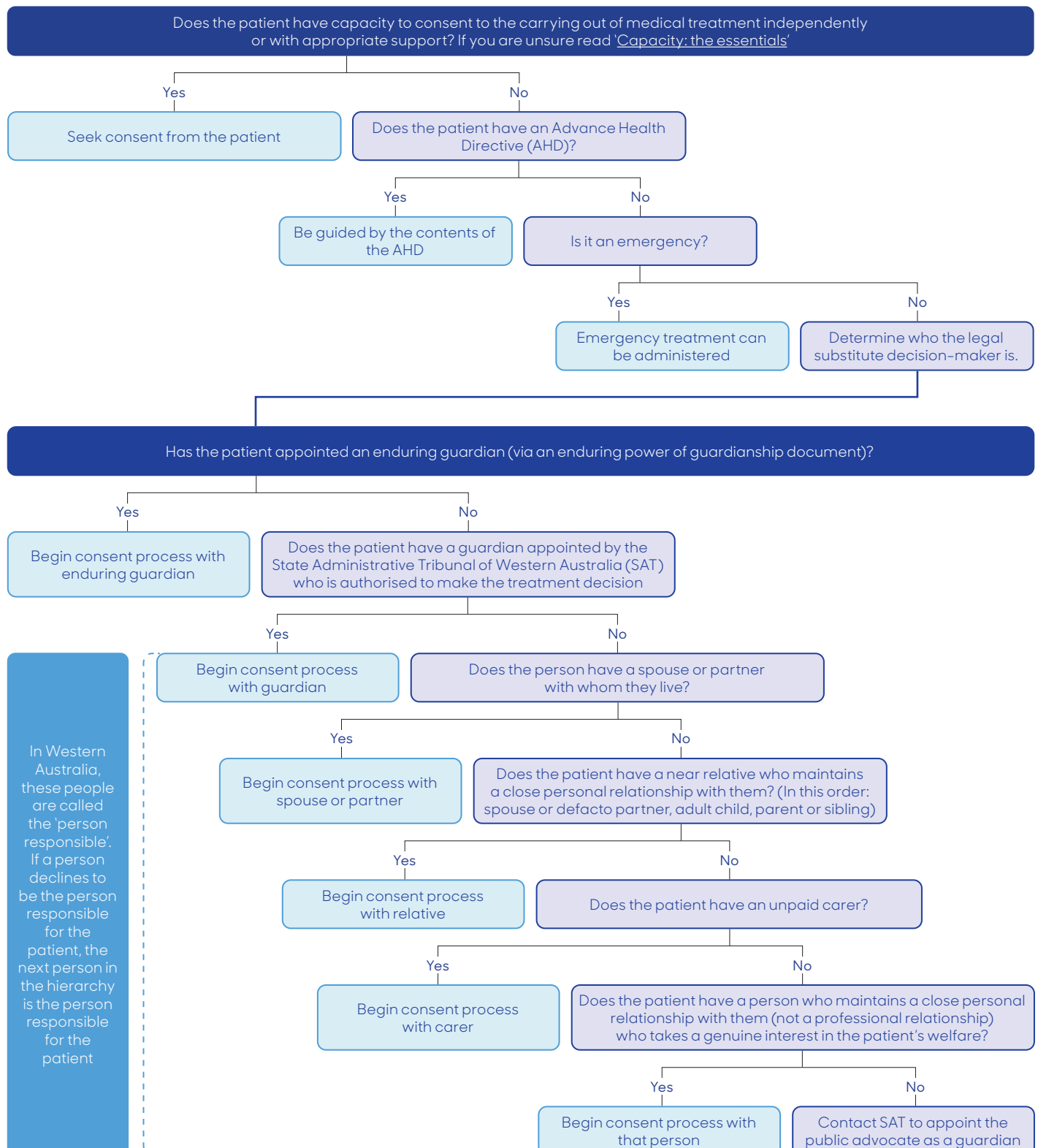


Substitute decision-makers for healthcare Western Australia

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.



Emergencies

You should assess whether urgent treatment is required. Where the patient is unable to make a treatment decision, treatment may be provided without consent if it is not practicable to determine whether they have an Advance Health Directive (AHD) or to obtain a decision from a guardian, enduring guardian or person responsible.

Treatment is considered urgent if it is necessary to save life, prevent serious damage to the patient's health, or relieve significant pain or distress.

Where practicable, you should take reasonable steps to determine whether the patient has an AHD or to obtain consent from a guardian, enduring guardian or person responsible.

In Western Australia, urgent treatment may also be provided where the patient is unable to make a treatment decision and the practitioner reasonably suspects the patient has attempted suicide.

Advance Health Directives

An AHD is a formal record of a person's decisions about future healthcare if they lose capacity.

An AHD can only be made by a person with full legal capacity.

An AHD may include decisions to consent to or refuse specific treatments, including medical or surgical treatment, palliative care and life-sustaining treatment.

If your patient does not have capacity, you should take reasonable steps to determine whether an AHD exists and whether it applies to the decision being considered. Any valid and applicable treatment decision in an AHD must be followed.

In Western Australia, an AHD should be completed in the approved form to ensure it is valid.

Decision-makers

In Western Australia, if a patient does not have decision-making capacity and there is no valid AHD, you will need to identify the appropriate person to make decisions on their behalf.

A person with capacity may appoint an enduring guardian to make treatment decisions if they lose capacity. The enduring guardian must act within the authority set out in the enduring power of guardianship.

A guardian may also be appointed by the State Administrative Tribunal to make decisions on behalf of the patient.

If there is no appointed enduring guardian or tribunal-appointed guardian, consent may be provided by the person responsible, identified according to a statutory hierarchy.

A person responsible must act in the patient's best interests. This includes making the decision they believe the patient would have made, taking into account the patient's values and preferences, rather than their own.

Limits on decision-making

In Western Australia, a decision-maker can make most treatment decisions on behalf of a patient, including consenting to or refusing treatment, and decisions about life-sustaining treatment and palliative care.

A person responsible cannot make decisions about certain treatments, including sterilisation and termination of pregnancy. Approval for these treatments must be obtained from the State Administrative Tribunal.

The scope of a decision-maker's authority may be limited by the terms of their appointment. An enduring guardian or tribunal-appointed guardian must act within the powers granted in the Enduring Power of Guardianship or by the Tribunal.

Additional resources

For more information on

- assessing capacity, please see the Avant factsheet: [Capacity: the essentials](#)
- advance care planning and substitute decision-makers for healthcare in Western Australia, see the [Office of the Public Advocate](#)
- advance health directives, including forms and guidance, see Department of Health: [Advance Health Directives](#)
- 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