



Health Care

Decision Making Framework (ADULT)

Policy	Health Care Decision Making Framework (excluding mental health matters)	
Approved by:	Public Guardian	Name: Natalie Siegel-Brown
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Application	Guardianship	
Related	Withdrawing and Withholding Life-Sustaining Measures – practice framework Human Rights Decision Making Framework	

Contents

a. Purpose.....	3
b. Relevant Legislation.....	3
c. The Public Guardian’s approach to health care decision making	3
d. Decision-Making Framework.....	4
Capacity	4
Definition of Health Care.....	5
Who is responsible for obtaining the consent	5
Good Medical Practice	6
Order of priority	6
Who can be a Statutory Health Attorney?	6
e. End of life decision making.....	8
Life sustaining measures in an acute emergency.....	9
f. Disagreement about a health matter/decision maker acting contrary to health care principle	9
g. Special health care	10
h. Medications.....	10
i. Enduring Documents.....	11
j. Other Qld Health Forms	11
k. Responsibility of the Delegate Guardian:.....	12
l. Health Consent Line 24/7 – 1300 753 624	12
m. Related Documents	12
Attachment 1.....	14
Withholding / Withdrawing Life-Sustaining Measures – Consent Procedure	14

Attachment 2.....	15
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a. Purpose

The purpose of the Office of the Public Guardian (OPG) is to advocate for the human rights of our clients.

For our adult clients, this means advocating for their rights, access to services, independence and choice as part of a supported decision-making model.

For our children and young people clients, this means advocating for their rights, access to services and where appropriate, their independence and choice.

Advocacy means understanding the lives and views of our clients with the aim of promoting and protecting their human rights. Advocacy can mean working to prevent or address discrimination, abuse or neglect. Advocacy does not mean taking over a client's life or problems. Advocacy does not mean taking over the roles and responsibilities of other government agencies or service providers.

b. Relevant Legislation

- a. *Guardianship and Administration Act 2000 (GAA 2000)*
- b. *Powers of Attorney Act 1998 (PoAA 1998)*
- c. *Public Guardian Act 2014 (PGA 2014)*
- d. *Health (Drugs and Poisons) Regulation 1996 (HDPR 1996)*
- e. *Mental Health Act 2016 (MHA 2016)*
- f. *Human Rights Act 2019 (HRA 2019)*

c. The Public Guardian's approach to health care decision making

When acting as a guardian or attorney for health care matters, delegate guardians act in accordance with the Health Care Principle¹, that is:

In the way least restrictive of the adult's rights, and

- a. Only if the exercise of power is –
 - i. necessary and appropriate to maintain and promote the adult's health and wellbeing; or
 - ii. in all circumstances, in the adult's best interests.

Where there is choice between two or more options, the less intrusive way should be adopted.

In making health care decisions, delegate guardians must, to the greatest extent practicable –

- a. Seek the adult's views and wishes and take them into account; and
- b. Take the information given by the adult's health provider into account.

In line with a supported decision-making approach, delegate guardians should:

- a. Obtain the adult's views and wishes,

¹ Schedule 1, Part 2, *Guardianship and Administration Act 2000 & Powers of Attorney Act 1998*

- b. Ensure the adult has access to all necessary information to provide informed views and wishes around any proposed health care and,
- c. Ensure the adult is not subject to undue influence when providing their views and wishes.

Delegate guardians will attempt to ascertain the adult's preferences relating to the proposed health care.

The Public Guardian acknowledges that non-verbal communication is a valid method for a person to convey their views, wishes and preferences. Refer to OPG's "Working with Nonverbal Clients" Practice Direction for further guidance.

Delegate guardians will only make a decision against the adult's preference, when necessary to protect them from significant harm.

Delegate guardians will make decisions in accordance with the adult's human rights as defined in the HRA 2019. Decisions which limit the rights of the adult will only occur in a manner which is reasonable and demonstrably justifiable. Decisions will also accord with OPG's Human Rights Decision Making Framework.

In making health care decisions, particular emphasis is made on the adult's right to recognition and equality before the law² and the right to access health services³.

d. Decision-Making Framework

The *GAA 2000* and the *PoAA 1998* provide a legislative framework for substitute decision making on behalf of adults with impaired capacity for a particular decision.

Section 61 of the *GAA 2000* provides that the health care provisions seek to strike a balance between:

- a. ensuring an adult is not deprived of necessary health care only because they have impaired capacity for the matter; and
- b. ensuring that health care is only provided when it is necessary and appropriate to maintain or promote the adult's health or wellbeing; or
- c. is, in all the circumstances, in the adult's best interests.

Capacity

The legislation presumes that adults have capacity to make their own decisions. An adult cannot be assumed to have impaired decision-making capacity without sufficient evidence.

'Capacity' is the ability to:

- understand the nature and effect of decisions about a matter
- freely and voluntarily make decisions about the matter, and
- communicate the decisions in some way.

The decision-making capacity of an adult may differ according to:

- a. The nature and extent of the impairment; and
- b. The type of the decision to be made, including, for example, the complexity of the decision to be made; and

² Section 15, *Human Rights Act 2019*

³ Section 37, *Human Rights Act 2019*

- c. The support available from members of the adult's existing support network.⁴

Despite an adult having a condition that may generally impair their capacity, consideration must be given to the specific decision required at that point in time, and to the adult's understanding of the nature and effect of the decision.

Definition of Health Care

The legislation defines health care as;

- (1) **Health care**, of an adult, is care or treatment of, or a service or a procedure for, the adult—
 - (a) to diagnose, maintain, or treat the adult's physical or mental condition; and
 - (b) carried out by, or under the direction or supervision of, a health provider.
- (2) **Health care**, of an adult, includes withholding or withdrawal of a life-sustaining measure for the adult if the commencement or continuation of the measure for the adult would be inconsistent with good medical practice.
- (3) **Health care**, of an adult, does not include—
 - (a) first aid treatment; or
 - (b) a non-intrusive examination made for diagnostic purposes; or
 - (c) the administration of a pharmaceutical drug if—
 - (i) a prescription is not needed to obtain the drug; and
 - (ii) the drug is normally self-administered; and
 - (iii) the administration is for a recommended purpose and at a recommended dosage level; or
 - (d) psychosurgery for the adult⁵.

Example of paragraph (b)—

a visual examination of an adult's mouth, throat, nasal cavity, eyes or ears

Who is responsible for obtaining the consent

In many instances, there is a shared responsibility for providing information to patients. However, as a guiding principle, the health practitioner who provides the health care will ultimately be responsible for ensuring that the patient or decision-maker has:

- a) received sufficient, appropriate information to make an informed decision, including information about the potential risks and benefits of the proposed or recommended health care and any alternatives;
- b) given valid informed consent prior to the provision of the health care.

⁴ Section 5(c), *Guardianship and Administration Act 2000*

⁵ Schedule 2, Part 2, section 5, *Guardianship and Administration Act 2000*

Good Medical Practice

When considering health care matters the health providers must have regard to Good Medical Practice⁶.

Good medical practice is having regard to:

- the recognised medical standards, practices and procedures of the medical profession in Australia, and
- the recognised ethical standards of the medical profession in Australia.

Delegate guardians will discuss Good Medical Practice with relevant health providers when considering health care matters for adults with impaired capacity.

Order of priority

When making health care decisions on behalf of an adult with impaired capacity, the matter may be consented to by the first of the following:

- a. A direction under an **Advance Health Directive**
- b. The adult's **guardian** (appointed by Queensland Civil and Administrative Tribunal)
- c. The adult's **attorney** for personal matters (under an Enduring Power of Attorney or Advance Health Directive)
- d. The adult's **Statutory Health Attorney (SHA)**⁷

Who can be a Statutory Health Attorney?

Where there is no formally appointed substitute decision maker, a SHA can provide consent to health care on behalf of an adult with impaired decision-making capacity.

A SHA is a person over 18 years who is readily available and culturally appropriate, and is first in the following order:

- a. A spouse of the adult if the relationship between the adult and the spouse is close and continuing;
- b. A person who has the care of the adult and is not a paid carer for the adult;
- c. A person who is a close friend or relation of the adult and is not a paid carer for the adult;
- d. The Public Guardian⁸

Where the Public Guardian is contacted to act as SHA, information is required to confirm how the health provider determined there is no other person available and appropriate to act as SHA.

Objection

If the adult objects to proposed treatment, the health provider must consider section 67 of the *GAA 2000*. Consent can only be provided despite an objection by the adult if:

- a. The adult has minimal or no understanding of one of the following –
 - i. What the health care involves,
 - ii. Why the health care is required; and
- b. The health care is likely to cause the adult –

⁶ Schedule 2, Part 2, section 5B, *Guardianship and Administration Act 2000*

⁷ Section 66, *Guardianship and Administration Act 2000*

⁸ Section 63, *Powers of Attorney Act 1998*

- i. No distress; or
- ii. Temporary distress that is outweighed by the benefit to the adult of the proposed health care.⁹

By not putting the adult's own decision into effect, or making a decision against the views and preferences of the adult, limits the adult's human right to recognition and equality before the law¹⁰.

The Public Guardian therefore considers providing consent despite an objection to be particularly intrusive.

Where the Public Guardian is contacted to provide consent in these situations, detailed information is required to demonstrate that the benefits will outweigh the temporary distress to the adult.

The Public Guardian will also consider the right for the adult to make their own decisions (regardless of capacity) as being fundamental to the adult's inherent dignity.

When consent is not required

Urgent Health Care

Health care, other than special health care of an adult, may be carried out without consent if the adult's health provider reasonably considers the adult has impaired capacity for the health matter concerned and either the health care should be carried out urgently to:

- a. Meet imminent risk to the adult's life or health; or
- b. Prevent significant pain or distress to the adult and it is not reasonably practicable to get consent from a person who may give it under the *Guardianship and Administration Act 2000* or the *Powers of Attorney Act 1998*.¹¹

However, health care provided to urgently meet imminent risk to the adult's life or health may not be carried out without consent if the health provider knows the adult objects to the health care in an Advance Health Directive.

As per section 63(3) of the *Guardianship and Administration Act 2000* Health care provided to prevent significant pain or distress to the adult may not be carried out without consent if the health provider knows the adult objects to the health care unless –

- (a) the adult has minimal or no understanding of 1 or both of the following—
 - (i) what the health care involves;
 - (ii) why the health care is required; and
- (b) the health care is likely to cause the adult—
 - (i) no distress; or
 - (ii) temporary distress that is outweighed by the benefit to the adult of the health care.

⁹ Section 67, *Guardianship and Administration Act 2000*

¹⁰ Section 15, *Human Rights Act 2019*

¹¹ Section 63, *Guardianship and Administration Act 2000*

The health provider must certify in the adult's clinical records as to the various things enabling the health care to be carried out in the case of an objection.

Minor and Uncontroversial Health Care

Section 64 of the *GAA 2000* provides for health care to be carried out **without consent** for adults with impaired capacity if the health care complies with the following:

- a. it is necessary and of the type to promote the adult's health and wellbeing; and
- b. it is minor and uncontroversial; and
- c. The health provider does not know, and can not reasonably be expected to know of –
 - i. A decision about the health care made by a person who is able to make the decision under the *Guardianship and Administration Act 2000* or *Powers of Attorney Act 1998*; or
 - ii. Any dispute among persons the health provider reasonably considers have a sufficient and continuing interest in the adult about –
 - a) The carrying out of the health care; or
 - b) The capacity of the adult for the health matter.¹²

However, the minor and uncontroversial health care may not be carried out without consent if the health provider knows, or could reasonably be expected to know, the adult **objects** to the health care.

The health provider must certify in the adult's clinical records as to the various things enabling minor and noncontroversial health care to be carried out.

It is the responsibility of the health provider (**not** the substitute decision maker) to determine whether or not the health care is minor or uncontroversial in each specific circumstance.

Examples of minor and uncontroversial health care include the administration of an antibiotic requiring a prescription and the administration of a tetanus injection.

Admissions and Transfers between Hospitals

The Public Guardian acknowledges that at times there may be a need for patients to be admitted to, or transferred to particular hospitals due to specific clinical needs and treatment availability. In these cases, consent is not required from the Public Guardian. This is a matter for hospital administration.

e. End of life decision making

Life sustaining measures may be withdrawn or withheld for an adult if the commencement or continuation of the measure for the adult would be inconsistent with good medical practice. The Public Guardian's consent may be sought to withdraw or withhold life sustaining measures, and for palliative care to be initiated.

The Public Guardian may be asked to make these decisions as guardian, attorney or SHA of last resort.

¹² Section 64, *Guardianship and Administration Act 2000*

Examples of life sustaining measures include, cardiopulmonary resuscitation, assisted ventilation and artificial hydration and nutrition.

[Attachment 1](#) provides a flowchart summarising consent procedures for withholding/withdrawing life sustaining measures. Further information relating to end of life decision making is detailed in OPG's "Withdrawing and Withholding Life-Sustaining Measures – practice framework".

Life sustaining measures in an acute emergency

Section 63A of the Guardianship and Administration Act 2000 states, in an acute emergency, a life-sustaining measure may be withheld or withdrawn for an adult without consent if the health provider considers:

- a. The adult has impaired capacity for the health matter concerned;
- b. the commencement or continuation of the measure for the adult would be inconsistent with good medical practice, and
- c. the decision to withhold or withdraw the measure must be taken immediately, consistent with good medical practice.

However, the measure may not be withheld or withdrawn without consent if the health provider knows that the adult objects to the withholding or withdrawal.¹³

Artificial nutrition and hydration are not considered life sustaining measures in an acute emergency.

f. Disagreement about a health matter/decision maker acting contrary to health care principle

The Public Guardian may exercise power for a health matter if there is a disagreement about the health matter for an adult, and the disagreement cannot be resolved by mediation.¹⁴

The Public Guardian may exercise power for a health matter if a guardian or attorney:

- a. refuses to make a health care decision, and this refusal is contrary to the health care principle of the *GAA 2000*; or
- b. makes a health care decision and the decision is contrary to the health care principle of the *GAA 2000*.¹⁵

Where a decision is required, and reasonable attempts by the hospital to resolve the matter have been unsuccessful, the Public Guardian can be contacted to consider further action, or to make the health care decision. Where this occurs, the treating team should contact the hospital legal department, who must then make a formal written request to the Public Guardian.

¹³ Section 63A, *Guardianship and Administration Act 2000*

¹⁴ Section 42, *Guardianship and Administration Act 2000*

¹⁵ Section 43, *Guardianship and Administration Act 2000*

Written requests can be made via email: healthcare@publicguardian.qld.gov.au

Due to the significant and intrusive nature of these matters, the Public Guardian requires detailed information, and must ensure that all attempts at resolving the disagreement have been exhausted before exercising powers under these provisions.

[Attachment 2](#) lists the information required by the Public Guardian before a decision can be considered.

Note: In some complex situations, it may be more appropriate to refer the matter directly to the Queensland Civil and Administrative Tribunal (QCAT) to make a determination on the appropriateness of a substitute decision maker, and where necessary, appoint an alternative decision maker.

g. Special health care

QCAT may, by order, consent to special health care, other than electroconvulsive therapy or psychosurgery, for an adult. Consent cannot be provided for special health care by any other substitute decision maker.

Special Health Care¹⁶ that may be approved by QCAT includes:

- a. Donation of tissue
- b. Sterilisation
- c. Termination of pregnancy
- d. Special medical research or experimental health care

h. Medications

Consent is not required for medications which are deemed minor and uncontroversial pursuant to section 64 of the *GAA 2000*. Where the Public Guardian is requested to provide consent for medication, this consent must be given to the prescribing health provider (e.g. the adult's GP).

The *Health (Drugs and Poisons) Regulation 1996* clarifies that a carer does not need endorsement to help another person to take a controlled drug if the person asks for the carer's help to take the dispensed medication¹⁷.

Note: Where a medication is being provided for the primary purpose of controlling the adult's behaviour, it is not considered a health care matter. Depending on the circumstances and environment in which the medication is being used, different consent procedures may apply.

¹⁶ Part 3, sections 68-73, *Guardianship and Administration Act 2000*

¹⁷ Section 74, *Health (Drugs and Poisons) Regulation 1996*

i. Enduring Documents

An Enduring Power of Attorney (EPOA) is a legal document that enables an adult to appoint one or more individuals to make personal, health and/or financial decisions on their behalf. For advance care planning, at least one person needs to be appointed to make health decisions on an adult's behalf.

More than one individual can be appointed as attorney. The individuals can be nominated to make decisions independently or jointly.

An Advance Health Directive is an advance care planning document stating a formal set of instructions for future health care. It is used in certain circumstances, to inform doctors of the adult's choices if they become unable to make health care decisions independently.

This document allows an adult to record their wishes relating to certain specific medical circumstances, such as the withholding of life sustaining measures.

It is a legally binding document that can only be completed while the adult has decision-making capacity for future care. It must be completed with the adult's doctor and witnessed by a Justice of the Peace (JP), Commissioner of Declarations (Cdec), lawyer or notary public.

The adult can revoke their Advance Health Directive, in writing, if they have the capacity to do so, and can complete a new document.

Mental Health Advance Health Directive

An Advance health directive for Mental Health is a document that allows an adult to make decisions for themselves about future health care, such as health care they would like to receive for a mental illness. This document can be used at a future time if they become unwell and are unable to make decisions.

For additional information about the *Mental Health Act 2016* and the Advance health directive for Mental Health please refer to OPG policy "Consent to mental health treatment and care by the Public Guardian" on the Office of the Public Guardian website.

j. Other Qld Health Forms

Acute Resuscitation Plan

An Acute Resuscitation Plan (ARP) is a clinical form completed by a medical officer and can be used in all Queensland Health adult facilities. The ARP guides conversations between medical officers, adult patients and their families about appropriate resuscitation planning, such as whether cardiopulmonary resuscitation (CPR) should be performed. The ARP is not a consent form and instead functions to encourage early discussions around future care in the event of an acute emergency.

Statement of Choices

The Statement of Choices form focuses on a person's wishes and choices for health care into the future.

An advance care plan, including the Statement of Choices, will only be used if a person is unable to make or communicate their decisions. People can change their mind, their plans, their Statement of Choices and legal documents at any time while they have decision-making capacity to do so.

k. Responsibility of the Delegate Guardian:

Delegate guardians of the OPG are to:

- a. Understand their decision making delegation prior to making a decision;
- b. Be aware of, and comply with this policy;
- c. In instances of case complexity or uncertainty the delegate guardian is to progress the matter to their Team Leader or Regional Manager for further advice and support;
- d. Pro-actively engage in health care guardianship and act within a supported decision making framework.

Managers are to:

- a. Provide guidance about decision making to officers of the OPG; and
- b. Escalate and resolve matters where existing decision making arrangements are negatively impacting on the protection of the rights and interests of the adult concerned.

Delegation:

Only senior executive staff have the delegation for certain health matters including; consent to withhold or withdraw life-sustaining measures, and consent to participation in an approved clinical trial. When OPG is contacted for either of these consents the delegate guardian will obtain all of the relevant information that is required to make a decision and the matter will be escalated to a member of the senior executive team for their consideration.

l. Health Consent Line – 1300 753 624

The OPG operates a dedicated line for health providers requesting health care decisions or enquiries relating to health matters for adults with impaired capacity. Delegate guardians throughout the state rotate on a roster system to field these calls.

Please note that the health consent line is available from 7am-7pm business days and 9am-5pm on weekends and public holidays. . Health care decisions such as, surgical/medical/dental consent can be consented to by delegate guardians. If the decision requires senior executive consent as per the instrument of delegation, the caller will speak with the delegate guardian who will then escalate the matter for approval, and get back to the caller as soon as practicable.

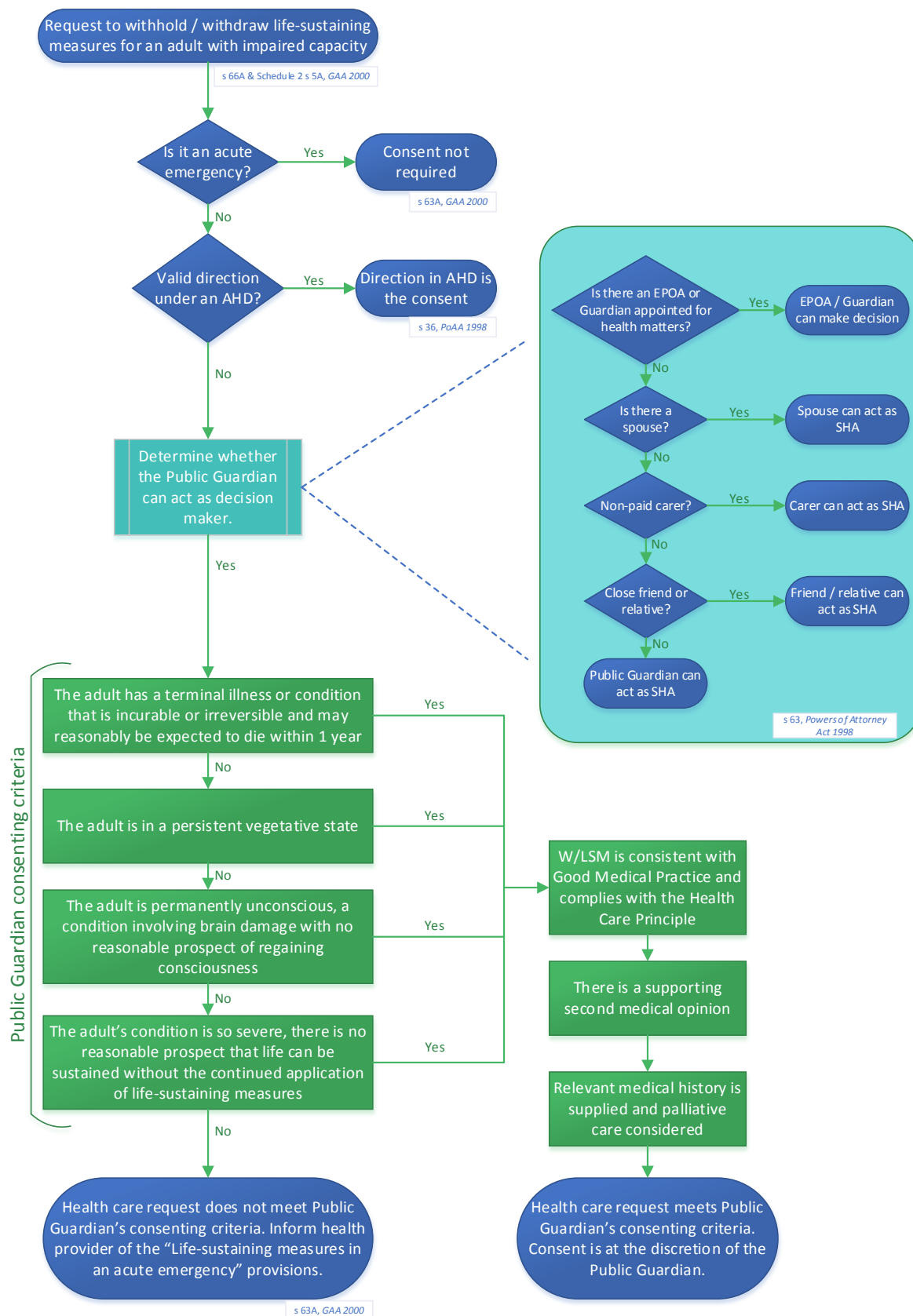
m.Related Documents

- a. [QLD Health Guide to Informed Decision Making v2](#)
- b. [Advance Health Directive](#)
- c. [Mental Health Advance Health Directive](#)
- d. [Enduring Power of Attorney](#)

Version #	Approved By and Role	Date	Changes from Last Version	E-docs #
3	Amelia Barker, Director Guardianship	15/01/2020	Updated to include Human Rights Act framework, and changes to after-hours health care.	#4207157
2	Amelia Barker, Director Guardianship	31/8/2018	Minor updates to legislation references and clarifying terminology.	#4207157
1	Natalie Siegel-Brown	/3/2018		#4207157

Attachment 1

Withholding / Withdrawing Life-Sustaining Measures – Consent Procedure



Attachment 2

Disagreement About a Health Matter

A request to the Public Guardian to make a decision under Sections 42 or 43 of the Guardianship and Administration Act 2000, should include the information below.
This request should be sent by Qld Health legal counsel.

