



Withholding and Withdrawal of Life-Sustaining Measures Decision Making Framework (excluding mental health matters)

Policy	<i>Withholding and Withdrawal of Life-Sustaining Measures Decision Making Framework (excluding mental health matters)</i>	
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Application	Guardianship	
Related	Health Care Decision Making Framework	

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a. 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. *Mental Health Act 2016 (MHA 2016)*
- e. *Human Rights Act 2019 (HRA 2019)*

b. Purpose

This decision-making framework is intended to guide medical professionals in the process that the Public Guardian will use to make end-of-life decisions. These decisions include the withholding and withdrawal of life-sustaining measures.

The withholding or withdrawal of life-sustaining measures is considered a health care matter under the Guardianship and Administration Act 2000. Life-sustaining measures include:

- Cardiopulmonary resuscitation
- Assisted ventilation
- Artificial nutrition and hydration

This means that medical professionals must obtain consent to withhold or withdraw life-sustaining measures from the relevant decision-maker.

c. Human Rights

All decisions made by the Public Guardian must be compatible with human rights as defined in the *Human Rights Act 2019*. Rights must not be limited unless reasonable to demonstrably justifiable. Rights which may be engaged when making decisions to withdraw or withhold life-sustaining measures include:

- Right to recognition and equality before the law
- Right to life
- Right to protection from torture and cruel inhuman or degrading treatment
- Right to health services.

This framework ensures that decisions are compatible with these rights. In particular, decisions are made in accordance with good medical practice and the health care principle, to ensure the adult's right to life and the right not to be arbitrarily deprived of life is upheld.

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

The Public Guardian is an independent statutory officer with specific powers and responsibilities to promote and protect the rights and interests of adults with impaired capacity.¹ When acting as a guardian or attorney for a person with impaired capacity's health care matters, delegate guardians act in accordance with the Health Care Principle², 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 structured decision-making approach, delegate guardians make enquiries to ensure:

- a. The adult has access to all necessary information to provide informed views and wishes around any proposed health care and,
- b. 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.

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

e. 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. The Public Guardian's Structured Decision-Making Framework (available on OPG's website) provides further guidance on guardianship decision making.

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.

¹ *Public Guardian Act 2014*

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

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
- c. The support available from members of the adult’s existing support network.³

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.

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 withholding or withdrawal of life-sustaining measures.

Good medical practice

When considering decisions to withhold or withdraw life sustaining measures the health providers must have regard to Good Medical Practice⁴.

Good medical practice is having regard to:

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

³ Section 5(c), *Guardianship and Administration Act 2000*

⁴ Schedule 2, Part 2, section 5B, *Guardianship and Administration Act 2000*

Order of priority

When making decisions withhold or withdraw life-sustaining measures 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)**⁵

Who can be a Statutory Health Attorney?

Where there is no formally appointed substitute decision maker, a SHA can provide consent to withhold or withdraw life-sustaining measures on behalf of an adult with impaired 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 Guardian⁶

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 at SHA.

f. 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.

Examples of life sustaining measures include (but not exclusive to), cardiopulmonary resuscitation (CPR), assisted ventilation and artificial hydration and nutrition.

Policy: Internal OPG guidelines

The OPG takes policy direction about when to consent to the withholding/withdrawal of life sustaining measures from section 36 of the *Powers of Attorney Act 1998* which outlines when an Advanced Health Directive can operate.

⁵ Section 66, *Guardianship and Administration Act 2000*

⁶ Section 63, *Powers of Attorney Act 1998*

When contacting the OPG for a decision regarding the withholding or withdrawal of a life sustaining measure the delegate guardian will discuss the below with the health professional.

Does the adult's situation satisfy one of the following categories;

- i. The adult has a terminal illness or condition that is incurable or irreversible and as a result of which, in the opinion of two doctors, the adult may reasonably be expected to die within one year;
- ii. The adult is in a persistent vegetative state – the adult has a condition involving severe and irreversible brain damage which, however, allows some or all of the principal's vital bodily functions to continue, including, for example, heart beat or breathing;
- iii. The adult is permanently unconscious – the adult has a condition involving brain damage so severe that there is no reasonable prospect of regaining consciousness;
- iv. The adult has an illness or injury of such severity that there is no reasonable prospect of recovery to the extent that the adult's life can be sustaining without the continued application of life sustaining measures

There may be situations that do not satisfy any of these categories; in these cases an Executive Officer of the OPG will consider each case on an individual basis.

OPG Consent Process

When contacting the OPG, the health provider will be asked to provide detailed information which will then be discussed with an executive officer.

Following these discussions the health provider may be consulted to provide further opinions and information.

Once a decision has been made the health provider will be notified OPG, and in the case that consent is approved, written correspondence will follow.

Information Required:

- personal details of the adult; name; DOB; social/living arrangements
- details of the adult's capacity; why can't the adult make this decision
- why the Public Guardian is the most appropriate substitute decision maker
- the adult's health history, current health condition/status/diagnosis
- the adult's likely prognosis/chance of recovery

- what are the Life Sustaining Measure/s (LSM) requested to be withheld/withdrawn e.g. CPR, assisted ventilation
- is the withholding/withdrawal of the LSM consistent with good medical practice
- is the withholding/withdrawal of the LSM in the adult's best interests
- what are the adults views and wishes/understanding
- what are the views and wishes of any other key parties in the adult's life
- are there any advance care planning documents such as statement of choices form A or B
- what are the proposed palliative care measures
- has a second opinion been obtained, and if so from whom?
- is the adult's situation consistent with the Public Guardian's policy

(the Public Guardian recognises that consideration may be required to situations outside of the policy scope)

Attachment A provides a flowchart summarising OPG's consent procedures for withholding/withdrawing life sustaining measures.

Withholding or withdrawal of life sustaining measures in an acute emergency

In an acute emergency, it may be inappropriate to continue to maintain life while attempts are made to obtain consent to withhold or withdraw treatment. 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 it.⁷

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

⁷ Section 63A, *Guardianship and Administration Act 2000*

g. 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 decision making framework;
- 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 delegate guardians 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 to consent to withhold or withdraw life-sustaining measures. When OPG is contacted for either of these decisions 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 and decision.

h. Disagreement about a decision to withhold or withdraw life-sustaining measures or decision maker acting contrary to health care principle

The Public Guardian may exercise power for decisions to withhold and/or withdraw life sustaining measures if there is a disagreement about it and the disagreement cannot be resolved by mediation.⁸

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*.⁹

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 decision. Where this occurs, the treating team should contact the hospital's legal department, who must then make a formal written request to the Public Guardian.

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

⁸ Section 42, *Guardianship and Administration Act 2000*

⁹ Section 43, *Guardianship and Administration Act 2000*

before exercising powers under these provisions.

Attachment B 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.

i. Advance Care Planning

Advance care planning involves thinking and making choices now to guide your future health care and communicate future wishes. The OPG engages in Advance Care Planning in a number of different ways, utilising available Queensland documents and resources (refer to sections I & J for further details on these documents).

When nominated to be an Attorney under an adult's Enduring Power of Attorney document, the OPG will discuss Advance Care Planning with the adult at the time of accepting the nomination. These discussions with an adult with decision making capacity include the recommendation to make an Advance Health Directive and complete a Statement of Choices Form A.

When the Public Guardian is appointed by QCAT as guardian for a person with impaired capacity, the delegate guardian, where practicable, will have a conversation with the person regarding their future wishes and preferences about end of life matters. This may include any religious, cultural or spiritual beliefs around death and dying. These conversations will also include other people in the adult's life who may know what the adult's views, beliefs and wishes may be. These conversations may have consideration to the Statement of Choices Form B.

Any information obtained from discussions about Advance Care Planning will inform the OPG when making health care decisions. This is particularly relevant for decisions to withhold or withdraw life sustaining measures. This aligns with the Health Care Principles under the GAA.

j. 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, 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 the OPG Policy "Consent to mental health treatment and care by the Public Guardian" on the Office of the Public Guardian website.

k. 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. It does not provide legal consent and does not override a legal document such as an Advance Health Directive. The ARP is a clinician's record and guides conversations between medical officers, adult patients and their families about appropriate resuscitation planning, such as whether cardiopulmonary resuscitation (CPR) should be performed. It can also facilitate decision-making and outcomes for patients at the end of life.

Although the OPG cannot consent to the ARP form as it is not a legal consent form, the OPG is able to discuss with the health provider the legislative requirements for a decision to withhold or withdraw life sustaining measures and if identified as the adult's decision maker, the OPG can consider such a decision.

Statement of Choices

The Statement of Choices form focuses on a person's wishes and choices for health care into the future. It does not provide legal consent and does not override a legal document such as an Advance Health Directive.

An advance care plan, including the Statement of Choices form, will only be used if a person is unable to make or communicate their decisions.

Further information relating to the Statement of Choices forms can be found at:

<https://metrosouth.health.qld.gov.au/acp>

People can change their mind, their advance care plans and legal documents at any time while they have decision-making capacity to do so.

I. Health Consent Line – 1300 753 624

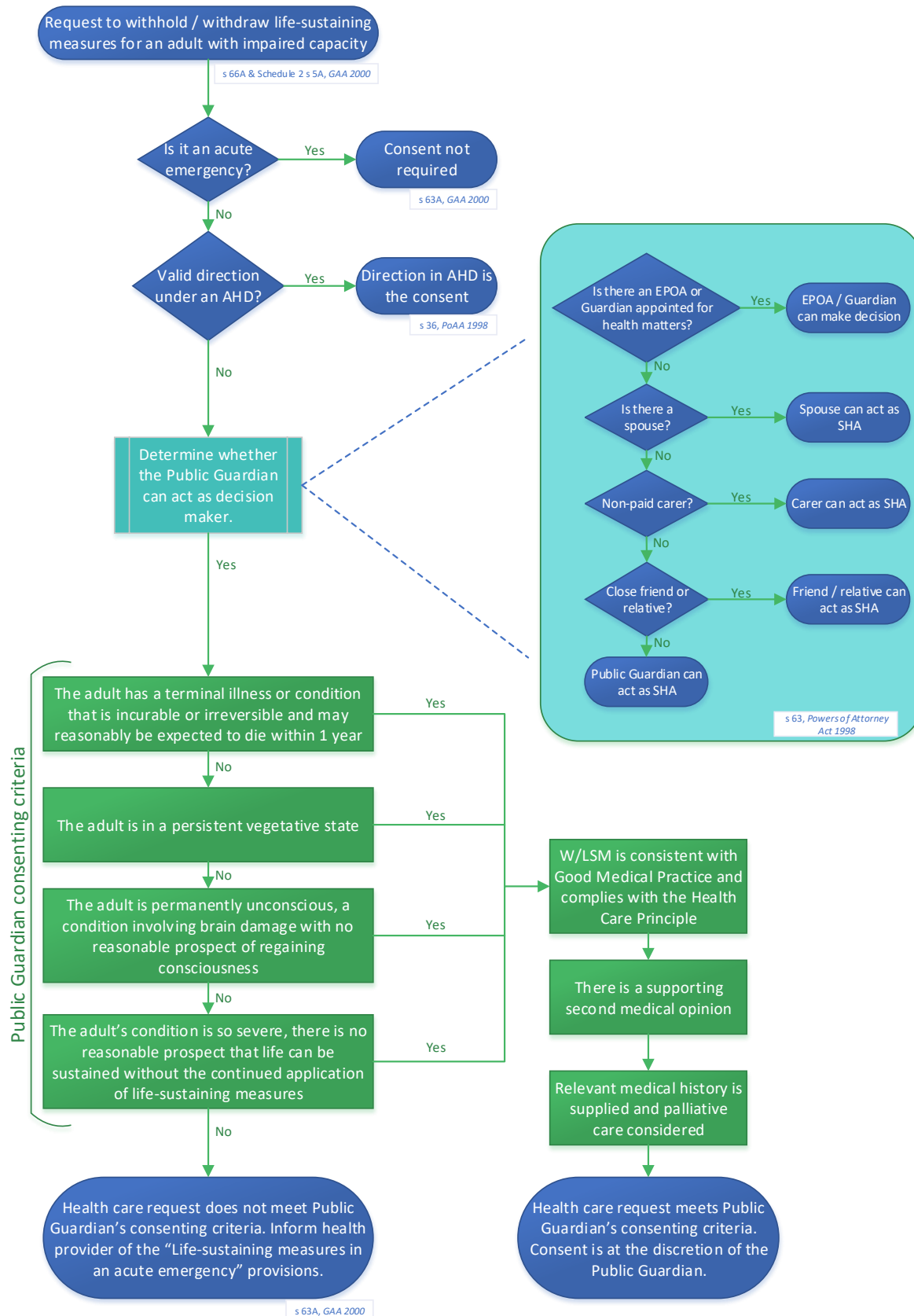
The OPG operates a dedicated line for health providers requesting health care decisions or enquiries relating to health matters, including withholding and withdrawing life sustaining measures, for adults with impaired capacity. Delegate Guardians throughout Queensland rotate on a roster system to field these calls.

Please note that the health consent line is available from 7am-7pm business days, and 9am-5pm on weekends and public holidays. As a decision to withhold or withdraw life-sustaining measures requires senior executive consent, the caller will speak with the delegate guardian who will then escalate the matter for decision, and get back to the caller as soon as practicable.

Where the decision is not required immediately, the request for consent should be submitted within business hours, when all team members of the OPG are available for complex advice and assistance. For example, a request for consent to withhold life-sustaining measures, where the person is unlikely to require the withholding before the next business day.

ATTACHMENT A

Withholding/Withdrawing Life-Sustaining Measures – Consent Procedure



ATTACHMENT B

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.

