Adults with Impaired Decision Making Capacity Procedure

Effective: 30 July 2021

1. Guiding Principles

Every adult is presumed to have capacity to make decisions and to consent to or refuse treatment, even if they have a condition that may potentially impact on their capacity.

It should not be assumed that a patient lacks capacity to make a decision solely because of their age, disability, appearance, behaviour, medical condition (including mental illness), beliefs, apparent inability to communicate, or the fact they make a decision with which the health practitioner disagrees. Health practitioners must work on the presumption that every adult patient has the capacity to decide whether to agree to or decline health care (including an examination, investigation or any form of treatment) except when it can be shown by a clinical assessment they do not have the capacity to make such a decision.

Decision-making capacity is when a person:

- Understands when a decision needs to be made about their treatment, care or support.
- Understands the facts of the decision.
- Understands the main choices available in relation to the decision.
- Weighs up the consequences of the choices given to them.
- Understands how the consequences affect them.
- Makes the decision based on the above information and communicates the decision in whatever way they can.

There are six key principles to be applied when assessing a person's capacity. The aim of the principles is to support and protect people and help them to make the most of their decision-making ability.

1. Always presume a person has capacity.
2. Capacity is decision specific.
3. Don't assume a person lacks capacity based on appearances.
4. Assess the person's decision-making ability – not the decision they make.
5. Respect a person's privacy.
6. Substitute decision-making is a last resort.

(NSW Capacity Toolkit 2008)

Note: Young people under the age of 18 are excluded from the scope of this document.

2. Procedure

The purpose of this procedure is to ensure a consistent approach throughout the WA Country Health Service (WACHS) for assisting with decision-making where a person is 18 years or older and there may be evidence that the person has impaired decision-making capacity. The procedure provides a framework to ensure that decisions are the least restrictive of a person's rights, taking into account the circumstances of the individual, while meeting supported decision-making obligations under the Convention on the Rights of Persons with Disabilities: Declarations and Reservations (Australia) August 2009 (the Convention) and other relevant legislation to the greatest possible extent.

This procedure aligns with and should be read in conjunction with the WA Health Consent to Treatment Policy, MP 0010/16 Patient Confidentiality Policy, the Clinical Governance, Safety and Quality Policy Framework, the Legal Policy Framework, the WACHS Advance Health Directive and Enduring Power of Guardianship Guideline 2021and the MP 0154/21 Managing Voluntary Assisted Dying.

A person's decision-making capacity can vary from situation to situation depending on the complexity of the decision to be made and can fluctuate in response to a person's health and wellbeing or in different settings. Capacity must always be assessed in the context of the specific circumstances.

Some conditions that may affect a person's capacity to make decisions include, for example:

- Dementia/Delirium
- Acute medical condition
- Acquired brain injury, including substance related brain damage
- Mental illness
- Intellectual disability.

2.1 Supported decision-making

The principles that guide supported decision-making practice in Australia, as set by The Australian Law Reform Commission (2014) are:

1. All adults have an equal right to make decisions that affect their lives and to have those decisions respected.
2. People who may require support in decision making must be provided with the support necessary for them to make, communicate and participate in decisions that affect their lives.
3. The will, preferences and rights of people who may require decision-making support must direct decisions that affect their lives.
4. Decisions, arrangements and interventions for people who may require decision-making support must respect their human rights.

Supported decision-making means providing a person with the help they need to allow them to make decisions about their treatment, care or support. This may involve providing information about treatment and care in different ways (e.g. the

use of an interpreter or translation service) and involving other people that the person trusts (e.g. person responsible, a family member, carer or close friend – see Figure 1). Appointing a substitute decision maker or Guardian should only be considered when all other options have been exhausted.

The Mental Health Advocacy Service WA has powers under the *Mental Health Act 2014* to advocate for mental health patients and their families, carers or nominated persons. Advocates provide independent services and assist to:

- Understand and enforce rights.
- Arrange and attend meetings with the treating team.
- Communicate the person's wishes to the treating team.
- Obtain further opinion from another psychiatrist.
- Apply to the Mental Health Tribunal to review involuntary orders or other decisions made about the person.
- Provide support at Tribunal hearings.
- Refer to legal services.
- Obtain input into treatment, support and discharge plans.
- Make a complaint about the mental health service.
- Engage interpreters when needed.
- Communicate with families, carers or other support persons.

(Mental Health Advocacy Services WA)

The six principles provide that before you assess someone as not being capable of making a certain decision themselves, you need to do everything you can to support them through the decision-making process.
The support you will be able to give varies, depending on the following:

- What decision is being made and in what context? For example, a significant one-off decision will require different support from day-to-day decisions.
- What are the circumstances of the person making the decision? Assist the person to access important information about their situation and present all available options to be considered including any risks and benefits of the options. Don't overload the person with more information than necessary.
- Whether the person has difficulty communicating. (Consider the use of an interpreter (including sign language) or ask if they would like an advocate present when an assessment is taking place.) Use simple language – avoid jargon or complex medical terms. Speak at an appropriate speed and volume. Ask one question at a time and wait for a response before continuing.
- Be aware of cultural and religious factors which might influence the person's way of thinking, communicating and behaving.
- How much time does the person have to make the decision? Allow as much time as is needed for the person to process the information and decide.
- Whether a person has decision-making capacity may also depend on environmental factors such as time of day, location, noise, medication and anxiety levels.

Where a person's condition fluctuates such that they are intermittently unable to make decisions for themselves, the following should be considered:

- If the clinical condition allows, deferring the health care until such time as the person can make a decision.

- Repeating the assessment on a number of occasions at times when the person appears best able to understand and retain the information.
- Involving those people whom the person considers might help them reach a decision.
- Seeking the views of those who personally know the person well, on the person's ability to decide, and best ways of communicating with them
- Using different communication methods.
- Continually revisit the process to ensure consent is current or the person has opportunities to express concerns or change their mind. If there are options, give the information about the choices in a balanced way. Be prepared to have more than one conversation with the person about the decision that must be made.

Each person will need support for decision-making tailored to their specific needs. Understanding the person well is essential for this to be done effectively.

Hierarchy of treatment decision-makers

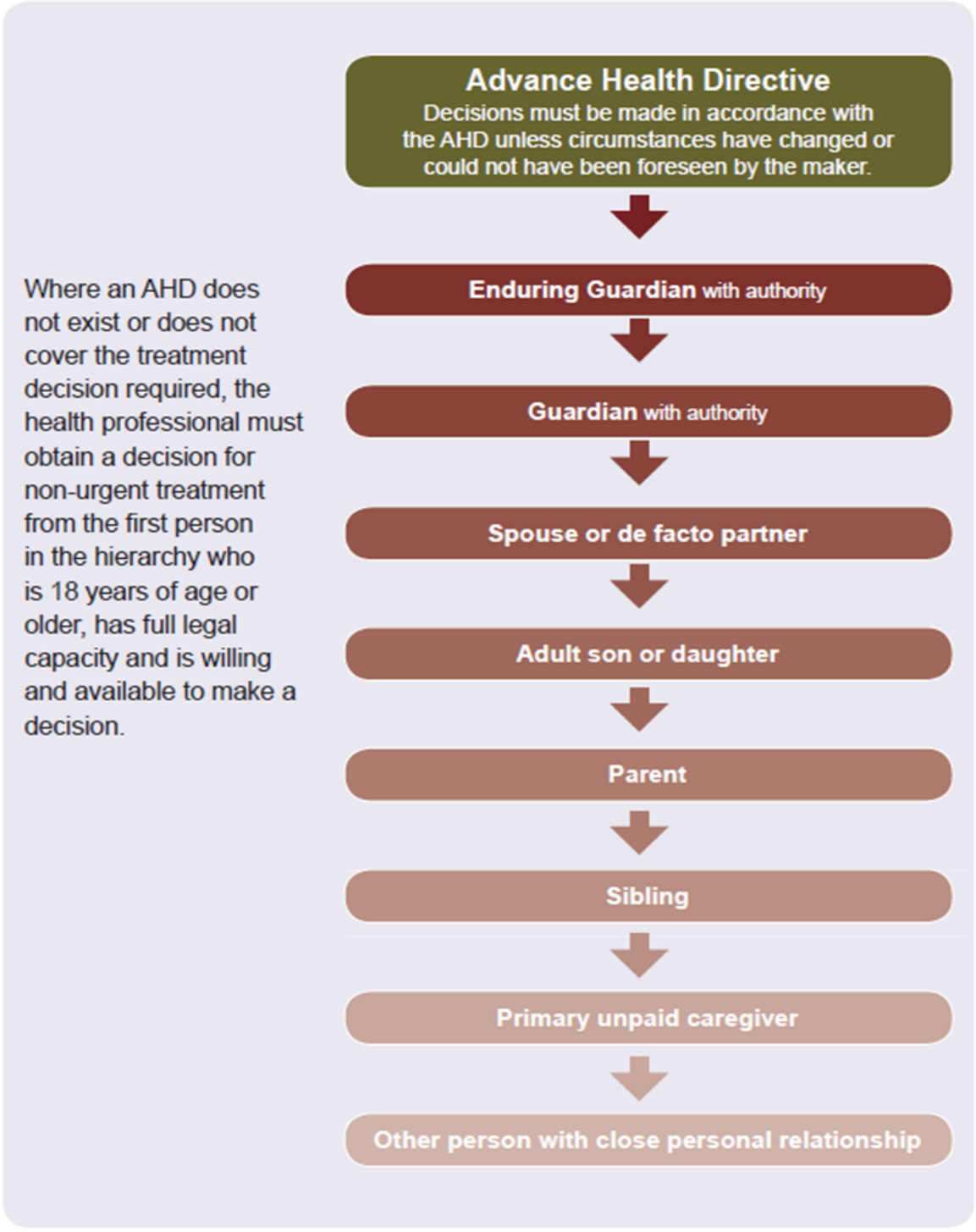

Figure 1: Hierarchy of treatment decision-makers. Source: Office of the Public Advocate

2.2 Dignity of Risk

A person with capacity has the right to make decisions including those involving risk that others may disagree with. A person does not lack capacity because they may make decisions that others consider is not in their best interests.

Risk can take several forms, including physical, legal, psychological, social and medical.

- Each person can have help to understand the risks and make decisions where possible.
- A person can have support to weigh up the potential benefits and risk involved
- If a person has decision-making ability (including with support) they have the right to make that decision, even if it is risky.
- In some situations, this right must be balanced against the need to protect a person who cannot make a decision, from harm to themselves or from exploitation by others.

2.3 Assessment of Capacity

A range of professionals can assess capacity and the person proposing the intervention should make an initial assessment. All doctors would be familiar with the process of formulating an opinion on decisional capacity. If there is concern that psychiatric illness or a neurological condition is affecting decisional capacity, it would be appropriate to seek a second opinion from a psychiatrist.

Medical professionals who may be able to carry out more complex capacity assessments include:

Professional Assessor	Expertise
Psychiatrist	A medical doctor who specialises in the study, treatment and prevention of mental disorders.
Psychogeriatrician	A psychiatrist who specialises in the diagnosis, treatment and prevention of mental disorders occurring in the aged.
Geriatrician	A medical doctor specialising in the diagnosis and treatment of disorders that occur in old age, and with the care of the aged.
Neurologist	A doctor who specialises in the study of the structure, functioning and diseases of the nervous system

Further information can be found in the WA Health Consent to Treatment Policy.

2.4 Substitute Decision Maker

If a person is unable to make reasonable judgments in respect of any treatment proposed to be provided to them, section 110ZJ of the *Guardian and Administration Act WA 1990* (GAAWA) provides that the order of priority of persons who may make a treatment decision in relation to the patient is the following:

- If the patient has made an Advance Health Directive containing a treatment decision in respect of the treatment, whether the treatment is provided to the person must be decided in accordance with the treatment decision.

- An enduring guardian (appointed under the GAAWA) who is authorised to make a treatment decision in respect of the treatment, reasonably available, and willing to make a treatment decision in respect of the treatment.
- A guardian (appointed under the GAAWA) who is authorised to make a treatment decision in respect of the treatment, reasonably available, and willing to make a treatment decision in respect of the treatment.
- Other person responsible.

The person responsible for the patient is the first in order of the below listed persons who is of full legal capacity, reasonably available, and willing to make a treatment decision in respect of the treatment:

- The person's spouse or de facto partner if that person has reached 18 years of age and is living with the person.
- The person's nearest relative who maintains a close personal relationship with the person, being the first in order of priority of the following relatives who has reached 18 years of age:
  - A child
  - A parent
  - A sibling.
- The person who has reached 18 years of age and is the primary provider of care and support (including emotional support) to the patient but is not paid for providing that care and support.
- Any other person who has reached 18 years of age and maintains a close personal relationship with the patient. A person maintains a close personal relationship with the patient only if the person has frequent contact of a personal (as opposed to a business or professional) nature with the patient and takes a genuine interest in the patient's welfare.

When making a treatment decision for the person, the person responsible for the patient must act according to the person's opinion of the best interests of the person.

Section 51(2) of the GAAWA provides that a guardian acts in the best interest of a represented person if he or she acts as far as possible as an advocate for the represented person:

- in such a way as to encourage the represented person to live in the general community and participate as much as possible in the life of the community
- in such a way as to encourage and assist the represented person to become capable of caring for himself and of making reasonable judgments in respect of matters relating to his person
- in such a way as to protect the represented person from neglect, abuse or exploitation in consultation with the represented person, taking into account, as far as possible, the wishes of that person as expressed, in whatever manner, or as gathered from the person's previous actions
- in the manner that is least restrictive of the rights, while consistent with the proper protection, of the represented person
- in such a way as to maintain any supportive relationships the represented person has,
- in such a way as to maintain the represented person's familiar cultural, linguistic and religious environment.

Best interests are specific to the person for whom the decision is being made. A decision in the best interests of a person is generally one that a person would make themselves, if they had the capacity to do so at that point in time. It is not necessarily the same decision that another person would make.

2.5 Treatment Decisions

When a person has impaired decision-making capacity at the time a treatment decision is required, who can make the treatment decision depends on whether the treatment is urgent or non-urgent. For information regarding treatment decisions see the WA Health Consent to Treatment Policy.

A non-urgent treatment decision must be made in accordance with the hierarchy of decision makers provided at Figure 1. If an AHD exists, it is the responsibility of the doctor providing the treatment to carefully check the AHD to see if it is appropriately completed and witnessed. (Note: if the will is not witnessed it must still be considered as a 'living will' guide). Refer to the WA Health Consent to Treatment Policy OD0657/16 for details.

An urgent treatment decision may be required if it is needed to save a person's life, prevent serious damage to the person's health or prevent the person from suffering significant pain or distress. An urgent treatment decision must be made in accordance with the requirements in the *Guardianship and Administration Act 2010*. That is, if the person needs urgent treatment, is not able to make reasonable judgement in respect of that treatment and it is not practicable for the health professional to determine whether the treatment decision can be dealt with by an AHD, guardian, enduring guardian or person responsible for the person, the health professional may provide the necessary treatment. (refer to section 4 of the WA Health Consent to Treatment Policy)
Note: The treating health professional may refer to the Regional Medical Director to adjudicate if they are unsure and an immediate decision is required.

In the instance of clinical urgency, if time permits and where practical, the attending health professional has a legal obligation to determine if an AHD, Goal of Patient Care form or EPG exists or in the absence of such make all reasonable attempts to seek consent from the responsible person.

If the guardian or person responsible is not a family member, it is preferable to also involve the family in discussions to facilitate their understanding of treatment decisions; however, in this situation the family's consent is not legally required.

The treatment of patients with mental illness is governed by the *Mental Health Act 2014 (WA)*. The *Mental Health Act 2014* (WA) has an essential role to play when patients lack capacity and are unable to act in their own best interests and clinicians are required to take on the responsibility of giving treatment and care (including electrotherapy and emergency psychiatric treatment) without consent.

Refer to the *Mental Health Act 2014* (WA) Part 5, Division 1 and Division 2 and the WA Health Consent to Treatment Policy.

More information can be found on the Office of the Chief Psychiatrist website: http://www.chiefpsychiatrist.wa.gov.au/

2.6 Application to the State Administrative Tribunal (SAT)

Where a patient lacks capacity, and there is no substitute decision maker, an application to the SAT must be made for a guardianship order or an administration order.

A guardianship order is an order that can be made by the SAT that gives a person (the Guardian) the authority to make decisions about another person's personal matters. Guardianship does not cover any financial decisions; it is limited to personal matters including decisions concerning medical treatment.

The SAT has a responsibility for resolution of issues under the *Guardianship and Administration Act 1990* (WA), including issues relating to AHDs, EPGs and EPAs.

2.6.1 Relatives or significant others may refer matters to the SAT

Any person can make application to the SAT for a guardianship order and/or an administration order. Where appropriate a relative, significant other or another suitable person should be encouraged to make the application to the SAT in the first instance. Applicants can seek assistance from the SAT when submitting their application.

2.6.2 Where decision makers cannot agree

If there is more than one substitute decision maker identified in accordance with the hierarchy of decision makers and those persons cannot agree, the WACHS staff member should encourage them to reach a consensus.

If consensus cannot be achieved, refer to the WACHS Ethical Decision Making for Clinical or Patient Care Issues Guideline - Escalation Flow Chart (Appendix B).

2.6.3 WACHS staff may refer matters to the SAT

In some cases, it may be appropriate for WACHS staff to refer the matter to the SAT for a guardianship order or an administration order, for example where:

- There is no person responsible in the hierarchy of decision makers who is available and willing to make the treatment decision.
- There is doubt about the decision maker's relationship to the person.
- There is confusion regarding the validity of an AHD, EPG or EPA or there is uncertainty regarding the appropriate decision-making hierarchy for a person with impaired decision-making capacity.
- There are family disputes regarding the AHD, EPG or EPA.
- The responsible person is acting in a manner that appears contrary to the person's needs, preferences and rights.
- Decisions made by the substitute decision maker conflict with what the health professional considers are likely to be in the person's best interest.

For information regarding AHDs, EPGs and EPAs refer to the WACHS Advance Health Directive and Enduring Power of Guardianship Guideline

If there is no arrangement in place under the *Guardianship and Administration Act 1990* (WA) which covers the decision to be made and there is clinical evidence that the adult has impaired decision making capacity, WACHS supports its staff to make applications to the State Administrative Tribunal (SAT) when necessary in order to protect that person's best interests. Any application to the SAT by WACHS staff in such circumstances should be guided by this procedure.

Ultimately, the decision to refer a matter to the SAT will depend on the circumstances of the person in question, what is in the person's best interest and what is the least restrictive way possible.

If the WACHS staff member requires further advice before making application to the SAT they should consult with their Tier 4, 5 or 6 Manager or Coordinator or phone the Office of the Public Advocate for advice. Refer to the WACHS Ethical Decision Making for Clinical or Patient Care Issues Guideline - Escalation Flow Chart (Appendix B).

Once a decision is made by the health professional to make an application to the SAT, the WACHS staff member must notify their Manager or Coordinator (Tier 5) that proceedings have been commenced. The Regional Director and the Regional Medical Director must be kept informed of any issue requiring referral to the SAT.

Application forms for SAT are available on the eCourt Portal of Western Australia: https://ecourts.justice.wa.gov.au/ecourtsportal/

2.6.4 What information to provide to the SAT when making an application
Where a WACHS staff member makes an application to the SAT the applicant is expected to complete the SAT application form in full and submit it together with information regarding the person's health and social circumstances.

So that an application can be processed as quickly as possible the applicant must:

- complete all relevant questions on the application form
- give as much detail as possible
- say why a Guardian or Administrator is needed
- attach all relevant documents including medical and any other reports
- if relevant, say why the application is urgent or should be given priority
- sign and date the application form
- if necessary, attach a covering letter with more information.

If the case is urgent and an application to the SAT is required, then this must be stated on the application and the SAT notified by telephone beforehand. Circumstances justifying an urgent hearing could include needing an appointment to:

- consent to urgent medical treatment
- prevent the person being removed from their current accommodation.

The completed SAT application form must be accompanied by the medical report, and/or social work report as appropriate.

If an up to date medical or social work report is not readily available to make the application, the relevant health professional(s) should complete the medical report

and/or the service provider report available on the SAT website. The completed report(s) must be provided to the Case Manager or sent directly to the SAT as the case requires. The purpose of the medical report is to enable the health professional to provide their views about the person's capability to make decisions in advance of the SAT hearing.

The purpose of the service provider report is to enable the health professional to give their views regarding the person's circumstances in advance of a hearing at SAT. The service provider report should reflect a synthesis and analysis of all information provided by stakeholders. Only relevant, factual, evidenced information should be included and where third-party information is obtained, this should be clearly stated. The medical report and service provider report are required to be completed online.

WACHS staff may also be requested by SAT to complete a medical report or service provider report if a third party has applied for Guardianship or Administration.

Ensure that a copy of the SAT form is kept in the person's health record file.

2.6.5 Duty of confidentiality when disclosing information to the SAT.

Health professionals are obliged by common law and statute to treat patient information in confidence. For more information about patient confidentiality please see the WA Health Patient Confidentiality Policy 2016.

The *Health Services (Information) Regulations 2017* made under the *Health Services Act 2016* (WA) authorise collection, use and disclosure of information for the purposes of, or in connection with, an application to the SAT for a guardianship order or an administration order under the *Guardianship and Administration Act 1990* (WA). Where information is disclosed in accordance with this legislation it is not a breach of confidentiality (see Appendix 1 for relevant provisions of the *Health Services Act 2016* (WA) and Health Services (Information) Regulations 2017).

Additionally, the SAT may issue a summons to attend or order the production of documents prior to a hearing under sections 66 and 35 of the *State Administrative Tribunal Act 2004* (WA), or may give a direction for a party to provide information or a document at any time once an application is underway under section 34 of the *State Administrative Tribunal Act 2004* (WA). Disclosure in response to a summons, order or direction from the SAT will not be regarded as a breach of confidentiality.

2.6.6 Attending the SAT hearing

It is the applicant's responsibility to attend the SAT hearing. If the applicant cannot attend for any reason, they must advise SAT and arrange for someone who is familiar with the application to attend in their place.

It is also the applicant's responsibility to arrange for the person whom the application concerns to attend the SAT hearing. The SAT must be advised by the applicant in advance if the person is not attending and the reason(s) why.

2.6.7 Carers are to be included in the proceedings

The *Carers Recognition Act 2004* (WA) requires that Health Service Providers comply with the Carers Charter (see s 6 and Schedule 2 of the *Carers Recognition Act 2004*)

(WA). The carer should be identified, requested to provide and receive information and be referred to carer supports where necessary.

2.6.8 Where a person requests a copy of the service provider report

Where interested parties request a copy of the service provider report they should be advised to contact the SAT. Interested parties may also apply for a copy of the report via the relevant Freedom of Information Officer.

2.6.9 Resolution of Issues and Legal Advice

If staff are unsure of their legal obligations or need legal assistance with progressing an application to the SAT WACHS staff must contact the WACHS Regional Medical Director on call to discuss any issues or queries.

3. Definitions

Adult	A person aged 18 years and older.
Advance Health Directive (AHD)	Means an advance health directive made under Part 9B of the *Guardianship and Administration Act 1990* (WA), including an instrument recognised as such under 110ZA of the *Guardianship and Administration Act 1990* (WA). Part 90 applies to treatment decisions in relation to patients under legal incapacity and specifies that 'advanced health care directives' include common law directives, in relation to a person under legal incapacity. Therefore, AHDs include: • those which comply, or substantially comply with the form prescribed under the *Guardianship and Administration Act 1990* (WA) • those made under equivalent provisions in other Australian jurisdictions which have been recognised as AHD by an order made by the State Administrative Tribunal • common law directives, in relation to a person under legal incapacity.
Capacity	In the context of medical treatment, a person has capacity if they can understand the nature, purpose and consequences of the proposed treatment. Capacity must always be assessed in the context of the decision that is to be made. The *Mental Health Act 2014* (WA) (s15) defines a person as having capacity when they: • understand any information or advice about the decision that is required • understand the matters involved in the decision • understand the effect of the decision • weigh up the above factors for the purpose of making the treatment decision

	• communicate the decision in some way.
Carer	A person who (without being paid) provides ongoing care or assistance to another person who has a disability, a chronic illness, including a mental illness or a person because of frailty requires assistance with carrying out everyday tasks; see the *Carers Recognition Act 2004* (WA).
Case Manager	The health professional appointed by the Tier 5 Manager or Coordinator to coordinate the application. The Case Manager acts as the primary contact person, advocate and support for the proposed represented person.
Enduring Power of Guardianship (EPG)	A formal document in which a person nominates a competent adult to be an Enduring Guardian (see the *Guardianship and Administration Act 1990* Part 9A). The guardian may make accommodation decisions, lifestyle decisions, and decisions about the appointor's health care or access to other persons.
Goal of Patient Care	A process which prompts and facilitates proactive shared decision making between the clinicians and patients and/or person responsible/family/carer(s) to ensure treatment provided is aligned to the patient's preferences, needs, values and wishes. It establishes and documents the agreed goal of patient care that will apply in the event of the patient's clinical presentation and/or deterioration.
Guardian	An adult appointed by the SAT to make wide-ranging decisions, including treatment decisions, on behalf of an adult person who does not have the capacity to make such decisions for him/herself (see *Guardianship and Administration Act 1990* Part 5).
Guardianship and Administration Act 1990	The Act provides for the guardianship of adults who need assistance in their personal affairs, for the administration of the estates of persons who need assistance in their financial affairs, to confer on the SAT jurisdiction in respect of guardianship and administration matters, to provide for the appointment of a public officer with certain functions relative thereto, to provide for enduring powers of attorney, enduring powers of guardianship and advance health directives, and for connected purposes.
Guardianship Order	A legal order made under the *Guardianship and Administration Act 1990*, appointing a person to make personal treatment and lifestyle decisions in the best interests of the person who is not capable of looking after their own health and safety, making

	reasonable judgements in respect of matters relating to their person or is in need or oversight, care of control in the interests of their own health and safety or for the protection of others and is in need of a guardian.
Health Professional	A person registered under the Health Practitioner Regulation National Law (Western Australia) 2010 in the health professions listed therein.
Hierarchy of decision makers	Relates to the consent process for patients under legal incapacity who are unable to make reasonable judgments about treatment. The hierarchy identifies the criteria for each person responsible and the order in which they should be consulted about a treatment decision (see *Guardianship and Administration Act 1990* (WA)) Refer to WA Health Consent to Treatment Policy section 4.3.1.2 for more information.
Medical Report	This form can be found on the SAT website and should be completed by the treating doctor.
Office of the Public Advocate	The Office of the Public Advocate is an independent statutory office established by the *Guardianship and Administration Act 1990.* The Public Advocate has the functions listed in Part 8 of the *Guardianship and Administration Act 1990*. The Public Advocate, among other things, may investigate, provide information, seek assistance for the person the subject of the application and seek to advance the interests of the person the subject of the application.
Person responsible	Under the *Guardianship and Administration Act 1990*, a person who may legitimately make a treatment decision on behalf of a patient who is unable to make reasonable judgments for him/herself as defined in section 110ZD of the *Guardianship and Administration Act 1990*. Refer to the Hierarchy of Treatment Decision Makers to determine who the 'person responsible' is.
Public Trustee	The Public Trustee is appointed under the *Public Trustee Act 1941*(WA). The Public Trustee can be appointed by the SAT to make financial and property decisions on behalf of a person who lacks capacity and if there is no suitable person responsible.
Service Provider Report	This is a form through which the service provider may give their views about the person's circumstances in advance of the SAT hearing. This can be completed by the Case Manager or primary health professional involved with the patient as

	appropriate.
State Administrative Tribunal (SAT)	Independent tribunal established under the *State Administrative Tribunal Act 2004* (WA) to hear disputes and make determinations about a range of administrative matters including guardianship matters.
Substitute decision maker	A substitute decision maker is a person permitted under the law to make decisions on behalf of someone who does not have capacity. Can include a parent or other adult with authority to make a treatment decision on behalf of a child, and it can include a 'person responsible' who can make a treatment decision for an adult (who can't themselves make a decision). A person can have more than one substitute decision maker who can make decisions about personal or financial matters.
Supported Decision-making	The process of enabling a person who requires decision-making support to make, communicate, decisions about their own life. The decision-making process is supported, but the decision is theirs.
Tier 4	Director Population Health, Regional Medical Director, Regional Nurse Director, Operations Manager, Corporate Services Director, Manager Aged Care, Manager Mental Health, and Manager Infrastructure and Support Services in accordance with the WA Country Health Service Authorities Schedule.
Tier 5	Managers and Coordinators identified in accordance with the WA Country Health Service Authorities Schedule.

4. Roles and Responsibilities

Tier 4 Regional Medical Directors, Regional Nurse Directors and Aged Care Managers

- To inform the Tier 3A Regional Director of any applications made to the SAT.

Tier 5 Managers and Coordinators

- Allocate an appropriately experienced health professional as the Case Manager and assist in the application to the SAT if required (in most instances, the Tier 5 Manager will usually allocate the WACHS staff member applying for guardianship on behalf of the person as the Case Manager)
- Inform the Tier 4 that an application to the SAT has been made.

Health Professionals

- Recognise and appropriately respond to suspected or alleged abuse or undue influence where a substitute decision-maker may be exerting undue influence over a person's decision-making, or unnecessarily restricting the available options.
- Notify their Tier 4 or Tier 5 manager or coordinator if a decision to make an application to the SAT has been made in consultation with the relevant parties.
- Ensure that a copy of the SAT form is kept in the person's healthcare record file.

Case Manager

- Coordinate the process, consulting with the proposed represented person, informal carers, family and key service providers to ensure that the medical report, social worker report and/or service provider report is developed using the necessary information and is written in the best interests of the person being represented
- Be guided by the principles and values as described in the *Guardianship and Administration Act 1990* (WA), the guidelines available through the Courts, the SAT, the Office of the Public Advocate, WA Health and relevant WACHS Policies and Procedures and their Tier 5 Manager
- Be inclusive of family and carers' views as per the *Carers Recognition Act 2004 WA* and to be transparent to all parties.

All Staff are required to work within policies and guidelines to make sure that WACHS is a safe, equitable and positive place to be.

5. Compliance

Failure to comply with this procedure may constitute a breach of the WA Health Code of Conduct (Code). The Code is part of the Integrity Policy Framework issued pursuant to section 26 of the *Health Services Act 2016* (WA) and is binding on all WACHS staff which for this purpose includes trainees, students, volunteers, researchers, contractors for service (including all visiting health professionals and agency staff) and persons delivering training or education within WACHS.

WACHS staff are reminded that compliance with all policies is mandatory.

6. Records Management

All WACHS corporate records must be stored in the approved Electronic Documents and Records Management System.

Records Management Policy

All WACHS clinical records must be managed in accordance with Health Record Management Policy.

7. Evaluation

Monitoring of compliance with this document is to be carried out by Aged Care Directorate at Central Office in collaboration with Legal and Legislative Services, every three (3) years using the following means or tools:

- Complaints associated with applications to the State Administrative Tribunal.

Regular investigation and case review to take place after complaints or issues arising at individual regional sites.

8. Standards

National Safety and Quality Health Service Standards – 1.7, 1.15
NSQHSS Aged Care Module – A1, A6
Australian Aged Care Quality Agency Accreditation Standards -1a-e, 2b, 2e
National Standards for Mental Health Services - 1.2, 1.3, 1.8, 1.10, 1.14, 1.15, 3.2, 6.7, 6.8, 7.10
National Standards for Disability Services - 1.3, 1.7, 1.8, 1.9, 3.1, 3.2

9. Legislation

Article 12 Convention on the Rights of Persons with Disabilities Declaration 2009
Aged Care Act 1997 (Cth)
User Rights Principles 2014
Accountability Principles 2014
WALW - Acts Amendment (Consent to Medical Treatment) Act 2008
Carers Recognition Act 2004 (WA)
Civil Liability Act 2002 (WA)
Guardianship and Administration Act 1990 (WA)
Health Services Act 2016 (WA)
WALW - Health Services (Information) Regulations 2017
Mental Health Act 2014
Public Trustee Act 1941(WA)
State Administrative Tribunal Act 2004 (WA)

10. References

1. A Guide to Enduring Power of Guardianship in Western Australia, 2010. Office of the Public Advocate.
2. WA Health Consent to Treatment Policy
3. MP 0015/16 Information Access, Use and Disclosure Policy
4. State Administrative Tribunal
5. WALW - Acts Amendment (Consent to Medical Treatment) Act 2008
6. Guardianship Fact Sheet
7. Australian Charter of Healthcare Rights
8. Charter of Aged Care Rights

11. Related Forms

MR00H.1 State Goals of Patient Care

12. Related Policy Documents

Advance Health Directive and Enduring Power of Guardianship Guideline
Goals of Patient Care (Adults) Guideline
Restraint Minimisation Policy

13. Related WA Health System Policies

WA Health Consent to Treatment Policy
MP 0010/16 Patient Confidentiality Policy
MP 0154/21 Managing Voluntary Assisted Dying

14. Policy Framework

Clinical Governance Safety and Quality Framework

This document can be made available in alternative formats on request for a person with a disability

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