



Australian Government



Carer Skills 4:

Legal issues



How long will it take?
15 to 30 minutes



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Your wellbeing is important to us.

If you find talking about your experience as a carer upsetting, you may want to talk to someone.

Lifeline 13 11 14 and Beyond Blue 1300 22 4636 are two services that are both available 24 hours a day, 7 days a week if you need support.

Introduction

Carers perform a range of tasks for the person they care for. Some carers pay bills, take care of banking, or update insurances on behalf of the person they care for. Others take part in formal meetings about the health and wellbeing of the person they care for, manage the delivery of support services or help decide changes to living arrangements.

Some carers might need to understand their rights in the workplace or the privacy and confidentiality rights of the person they care for.

Some people being cared for don't need any support to make decisions about their financial circumstances, personal care needs, health and wellbeing and lifestyle, while others have limited capacity to do this.



Legal disclaimer

This module is provided as general information and is not legal advice. When making decisions around legal issues, carers should not rely on this module alone and should obtain their own appropriate independent legal advice before proceeding. The Department of Social Services will not be liable to carers who act in reliance upon this module only. Please refer to the Carer Gateway Terms of Use for further information: **[carergateway.gov.au/terms-of-use](https://www.carergateway.gov.au/terms-of-use)**

Why should I do this module?

Carers can sometimes find themselves feeling powerless or in confusing situations, especially during times of crisis. There are some “legal” matters that you should be aware of in your caring role.

It is important that you and, if possible, the person you care for understand the responsibilities that come with being a carer. Understanding your responsibilities and rights can:

- make your caring role easier because there are documents such as power of attorney, enduring guardianship and advance care directive/plans which you may not know about
- help simplify decision-making when complex situations arise, such as medical emergencies or sudden deterioration in health
- give you and the person you care for an opportunity to discuss and agree on a range of matters including:
 - decision-making for the person you care for (both now and into the future)
 - health, lifestyle and living arrangements of the person you care for (both now and into the future)
 - privacy and confidentiality of the person you care for, particularly how it impacts on your role as a carer
 - duty of care
 - work



Why should I do this module?



- give peace of mind to you and the person you care for by:
 - providing an opportunity to plan for the future
 - knowing that you have everything in place to transition to the next phase
- be empowering to be able to stand up for your rights and those of the person you care for
- help identify areas where you may need to develop your skills, for example supported decision-making, managing hazards in the home of the person being cared for or medication management
- bring you and the person you care for closer through a shared understanding of your caring role and their and your needs.

We know some carers might find legal matters daunting. This module includes:

- simple definitions and explanations
- helpful information for you and the person you care for
- tips
- a glossary of terms
- links to additional resources.



We wanted to read this module as we learned the hard way that 'life' happens when you least expect it. Life is travelling along okay again now, but when the accident happened we found ourselves scrambling to make decisions in the moment. Having read this we will be better prepared for whatever life throws at us.

Tom, 67. Carer to his wife Nancy (60) with a spinal cord injury.

Overview of the legal landscape for carers



The module has been divided into the following five units:

- decision-making for the person you care for:
 - capacity to make informed decisions
 - who can give consent
 - power of attorney or equivalent (finances, legal matters and asset management)
 - enduring guardianship or equivalent (health and living arrangements)
- health:
 - My Health Record
 - advance care directive
- your obligations and rights as a carer:
 - Carer Recognition Act
 - duty of care
 - privacy and confidentiality of the person you care for
 - work
- glossary of terms
- additional resources.

Don't put off sorting out legal "stuff"

- Carers are busy people so it's easy to put off discussions about legal issues with the person you care for. It is important to have these discussions:
- while the person you care for has capacity to understand the issues and make informed decisions about what they want
- when you and the person you care for are calm and have time to think about the issues rather than during a crisis.



How should I approach the module?

It is recommended that you:

- read each subject one at a time, over a cup of tea or coffee
- if possible, include the person you care for
- discuss your caring situation and decide whether or not you or the person you care for needs to do anything more.

As you work through the module keep a list of anything you need to follow-up. At the end of the module there is a checklist you can use to prioritise your list of activities.

Overview of the legal landscape for carers



I broke down in tears over the phone the other day to Liz' bank ... all I wanted to do is help my sister, but I keep running into closed doors – it's exhausting and I'm getting frustrated. I am hoping that this module will help me work out how to better support Liz and how to navigate the systems so that the bank, electricity company, Centrelink, phone company, doctors and everyone else starts opening doors rather than closing them in my face.

Megan, 44 years old, mother of two, working full-time and carer to her sister Liz (43) who has Down Syndrome.

What do I need to follow-up?

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Capacity to make decisions



As a carer it is important to understand the capacity of the person you care for to make informed decisions.

What is “capacity”?

Capacity describes a person’s ability to make a decision about:

- medical/health care
- finances
- personal matters, for example where to live, what support or services they need
- legal matters, for example making an advance care directive or will, entering into contracts.

Every person has the right to make their own decisions and must be assumed to have capacity unless it is proved otherwise.

You can’t assume someone can’t make a decision because they have a particular medical condition or disability.

The definition of capacity differs between states and territories.

What is impaired decision-making?

Impaired decision-making is when a person is unable to:

- understand the information and the choices they have
- retain the information, even for a short time
- make a decision based on this information
- understand the consequences of decisions
- communicate the decision in some way.



Capacity to make decisions



Decision-making capacity can vary

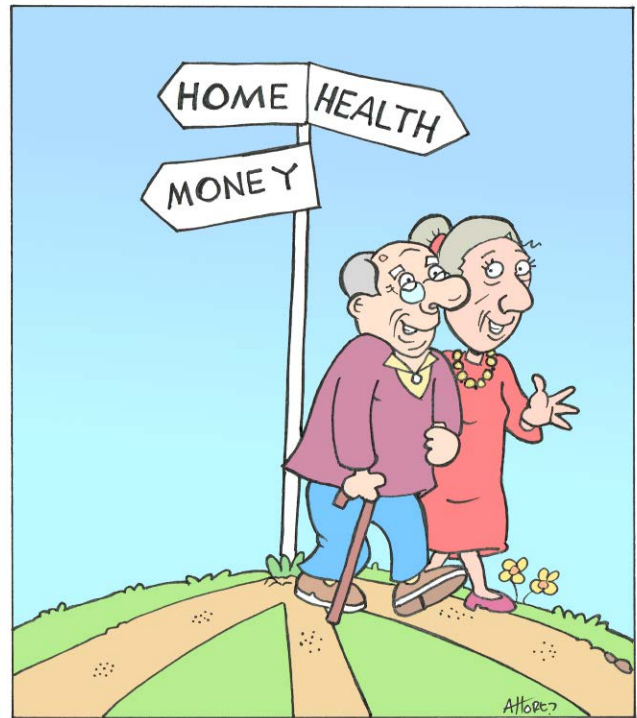
Decision-making capacity can vary depending on:

- the type of decision being made
- the timing of the decision, for example if the person is tired
- the complexity of the situation
- how information is given – the amount of information the person is given and whether it has been given in a way to maximise their understanding
- the environment where the decision is being made – is it noisy or overwhelming, is the situation stressful
- prior experience – how much knowledge or familiarity the person has with the topic
- culture, language and education – how does the person's background impact their capacity to make decisions
- health – does the person have an illness or condition that affects their decision-making
- personal stress – is the person experiencing personal stress at the time.

Supporting the person you care for to make a decision

It's important that the person you care for makes their own decisions, or contributes to their decisions, wherever possible, noting that:

- a person can have decision-making capacity for some decisions but not others
- decision-making capacity can fluctuate so check if there are certain locations, times of the day or circumstances where they might be better able to make a decision.



You can help the person you care for to make decisions by explaining all the relevant information and options in a way that's easier for them to understand, for example:

- using plain language and simple sentences
- using pictures or photos
- writing it down
- using technology
- finding a quiet comfortable place
- getting an interpreter.

Capacity to make decisions



Who determines capacity?

If you have concerns about whether or not the person you care for has capacity the first step is to discuss the matter with their GP.

It is a good idea to get a medical certificate from the treating doctor of the person you care for if the doctor decides that they do not have capacity to make informed decisions.

If the doctor can't decide you can ask your state or territory Guardianship or Civil and Administrative Tribunal to make a decision.

What do I do if the person I care for lacks capacity to make decisions?

If the person you care for does not have capacity to make informed decisions and they do not have a suitable power of attorney and enduring power of guardianship:

- you, a family member or friend may need to apply to your state or territory Guardianship or Civil and Administrative Tribunal to become their financial manager and/or guardian
- you can contact your state or territory Public Trustee and/or Public Guardian to ask them if they can become their financial manager and/or guardian.

The tribunal can make an individual or the Public Trustee/Guardian the financial manager and/or guardian of the person you care for.

Making a decision for someone who lacks capacity

If the person you care for does not have capacity to make a decision a substitute decision-maker will need to do this for them. All decisions must be made in the person's best interests:

- think about what the person would want and what is best for them
- take into account anything they have previously said that they want and any beliefs or values they have
- ask other people who are close to the person what they think.

Additional resources

- working with professionals:
<https://www.carergateway.gov.au/working-with-professionals>
- mental health:
rights and responsibilities of carers
<https://www.carergateway.gov.au/mental-health-rights-and-responsibilities-of-carers>
- what to do when someone refuses help:
<https://www.carergateway.gov.au/what-to-do-when-someone-refuses-help>
- legal aid:
<https://www.australia.gov.au/content/legal-aid>

Capacity to make decisions



Unfortunately, my father-in-law's dementia has progressed again and he is having more difficulty recalling information and events. As a result he is regularly accusing me of not involving him or consulting him in decision-making ... even though he is present at all the appointments with his doctors.

I've tried to write notes at the meetings for him, and even provide him with information to read after the meetings. None of it has been working – so we went to the GP to explore whether we need to apply for guardianship. Thankfully, our Guardianship Tribunal date is coming up – we are hoping that this will help us find the best way to support him.

Mary, 57. Carer to her husband with MS and her father-in-law with dementia.

What do I need to follow-up?

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Who can give consent



Giving consent is different to decision-making capacity.

Capacity is a question of the person's ability to make decisions about their own affairs.

Consent is the person actually making that decision themselves. A person cannot give their consent if they do not have capacity to make an informed decision.

Adults

All adults are presumed to be able to make decisions and give consent about their own affairs, such as medical or financial decisions. To give valid consent, the consent must be:

- given voluntarily and without pressure
- given by a person with the necessary capacity to understand the decision and its consequences
- specific to the decision
- given by a person who has been informed about all relevant information regarding the decision.

If a person cannot satisfy the requirements for any reason, they are not capable of giving consent.

Children

If a child under the age of 18 does not have capacity to understand or make an informed decision, because of age, maturity, disability or another reason, they cannot give their consent.

A parent or guardian can give consent on behalf of a child they care for. The parent or guardian must act in the child's best interests.

The older a child is, the more likely they are to understand and be able to make decisions.



The authority of a parent or guardian to make decisions for their child decreases as the child's capacity to understand those decisions increases.

A child's ability to consent depends on their competency as well as the type of decision they are required to make. A young child wouldn't usually have capacity to consent to medical procedures, especially where the procedure is complex. However, the older the child, the more likely they are to understand their decisions, and they will be able to consent.

An assessment of a specific child's capacity to consent will need to be carried out to determine whether they can understand the decisions and whether they have capacity in each case.

Who can give consent



What do I do if the person I care for doesn't have capacity?

If the person you care for does not have capacity to make an informed decision, they cannot give their consent to that decision. In those circumstances see if they have a suitable power of attorney and enduring power of guardianship and, if not:

- you, a family member or friend may need to make an application to your state or territory Guardianship or Civil and Administrative Tribunal to become their financial manager and/or guardian
- you can contact your state or territory Public Trustee and/or Public Guardian to ask them if they can become their financial manager and/or guardian.

The tribunal can make an individual or the Public Trustee or Public Guardian the financial manager and/or guardian of the person you care for.

Additional resources

- working with professionals:
<https://www.carergateway.gov.au/working-with-professionals>
- mental health:
rights and responsibilities of carers:
<https://www.carergateway.gov.au/mental-health-rights-and-responsibilities-of-carers>



This was a really helpful reminder for us. As parents we know that we have authority to give informed consent for our children when they are young. But, more importantly, this has highlighted that for Alice, we will need to revisit this again and again as she grows older.

Jack (42) and Irene (40), parents to three children, including Alice (7) with autism.

What do I need to follow-up?

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Power of attorney or equivalent

The person you care for may need help, or there might come a time when they need help, to make decisions about finances, legal matters and asset management.

What is a power of attorney?

A power of attorney is a legal document that gives a person/s the power to make legally binding decisions on another person's behalf about their finances, legal matters and asset management.

There are different types of power of attorney and the rules and terminology vary by state and territory.

It is a good idea for anyone over the age of 18 to:

- think about having a power of attorney
- review their power of attorney needs as they transition through different stages of their life.

What is an attorney?

An attorney is the person/s appointed to act on another person's behalf in their power of attorney document.



Does the person I care for need a power of attorney?

It might be helpful for the person you care for to have a power of attorney if:

- they need help to make decisions about their finances, legal matters or asset management
- as part of your caring role you:
 - help with banking
 - update or change any arrangements for utilities, such as changing suppliers
 - update or change insurance
 - manage their property or investments
 - prepare their tax return
 - help with legal matters.

Power of attorney or equivalent

How does the person I care for arrange a power of attorney?

If the person you care for has capacity to make informed decisions:

- if their financial and legal affairs are complex, it might be helpful for them to see their solicitor
- their state or territory Public Trustee can prepare the document
- they can download power of attorney forms for their state/territory (website links are included in the additional resources – see below and at the end of the module).

If the person you care for does not have capacity to make informed decisions:

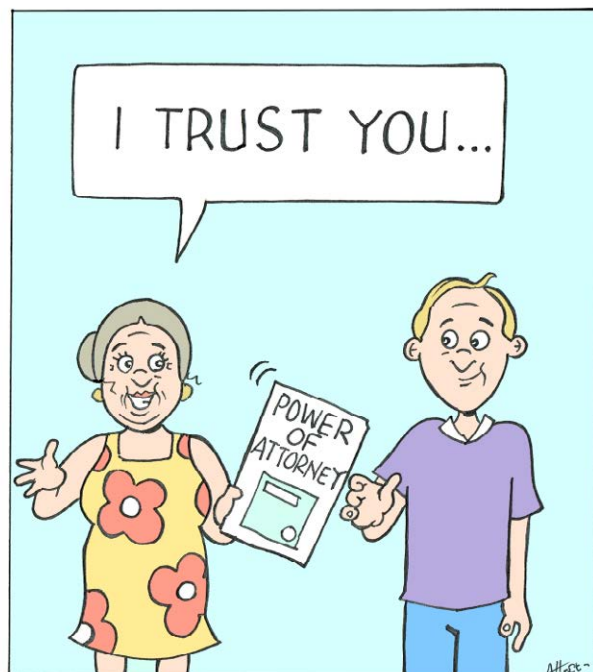
- you, a family member or friend may need to make an application to your state or territory Guardianship or Civil and Administrative Tribunal to become their financial manager
- you can contact your state or territory Public Trustee to ask them if they can become their financial manager.

The tribunal can make an individual or the Public Trustee the financial manager for the person you care for.

Tips

Some tips for the person you care for if they have capacity to make informed decisions:

- most people have more than one attorney
- if they have more than one attorney they will need to decide if they can act independently or only through joint agreement
- whether or not they want to have any restrictions, for example not having the power to make gifts on your behalf



- their power of attorney can only be used:
 - in the state or territory where it has been signed and witnessed
 - only in states or territories which have mutual recognition legislation, for example NSW
 - if the document is not recognised in another state or territory you can make an application to that state or territory's Guardianship or Civil and Administrative Tribunal for recognition of the document or, if the person still has capacity, to make a new one in that state or territory
 - a table is included in the resources which shows which states and territories power of attorney documents are operational in – see additional resources below and at the end of the module.

Power of attorney or equivalent



Some tips for you if you are an attorney for the person you care for:

- photocopy several copies of the document and have them certified by a Justice of the Peace
- give a certified copy of the document to each organisation you do business with on behalf of the person you care for, for example:
 - banks and other financial institutions
 - superannuation fund
 - utilities
 - insurance companies
 - accountant and financial adviser
 - Centrelink
 - service providers.
- do not feel you need to make decisions on your own – it is often a good idea to get expert advice on big decisions, such as selling property because this may affect taxation liabilities, pensions and other government benefits.

Additional resources

- working with professionals:
<https://www.carergateway.gov.au/working-with-professionals>
- mental health: rights and responsibilities:
<https://www.carergateway.gov.au/mental-health-rights-and-responsibilities-of-carers>
- what to do when someone refuses help:
<https://www.carergateway.gov.au/what-to-do-when-someone-refuses-help>
- Powers of Attorney Australia:
<https://www.australia.gov.au/content/powers-of-attorney>
- Public Trustees Australia, which includes links to all state and territory organisations:
<https://www.publictrusteesaustralia.com/>
- Australian Guardianship and Administration Council:
<https://www.agac.org.au/links>
- legal aid: <https://www.australia.gov.au/content/legal-aid>

Power of attorney or equivalent



Understandably Ivy has been really struggling with the impact of her health, so much so that she is finding it hard to manage her finances. I have been trying to help her with her errands, but I keep getting blocked at every turn. Since reading this, we had a chat and she has decided to appoint me as her power of attorney – now I can assist her without having to deal with all the red-tape.

Ivy wondered whether she should sell some of her shares, but wasn't sure if the market was in a good place to do that. We talked about it and decided that it is a good idea to have someone independent to give us with financial planning advice.

Joanna (57) started caring for her friend, Ivy (79) with heart disease, breast cancer and suspected cognitive impairment. Joanna lives with her husband Rob (66).

What do I need to follow-up?

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Enduring power of guardianship or equivalent

The person you care for may need help, or there might come a time when they need help, managing their health and living arrangements.

What is an enduring power of guardianship?

An enduring power of guardianship is a legal document that:

- gives a person/s of your choice the power to make personal, lifestyle and health decisions on your behalf if you become incapable of making these decisions for yourself
- only comes into effect when the person no longer has capacity to make reasoned decisions.

In some situations a person's ability to make reasoned decisions can fluctuate, for example someone with a mental illness. The enduring power of guardianship only becomes operational when the person is unable to make decisions for themselves.

The rules and terminology for guardianship vary by state and territory.

It is a good idea for anyone over the age of 18 to:

- think about having an enduring power of guardianship
- review their enduring power of guardianship needs as they transition through different stages of their life.

What is an enduring guardian?

An enduring guardian is the person/s appointed to make decisions on behalf of another person in their enduring power of guardianship document.



Does the person I care for need an enduring power of guardianship?

It might be helpful for the person you care for to have an enduring power of guardianship if:

- they need help to make decisions about their personal, lifestyle and health decisions
- as part of your caring role you help the person you care for make decisions about
 - where they live
 - who they live with
 - where and how they work
 - medical treatment or other health care such as palliative care and life-sustaining measures
 - education and training
 - support services
 - other lifestyle decisions such as holidays.

Enduring power of guardianship or equivalent

How does the person I care for arrange an enduring power of guardianship?

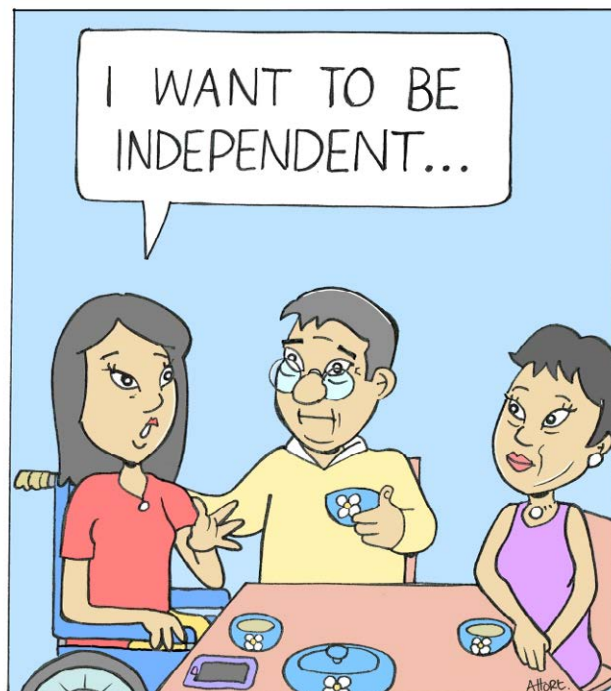
If the person you care for has capacity to make informed decisions:

- see their solicitor
- their state or territory Public Trustee can prepare the document
- they can download power enduring guardianship forms for their state/territory (website links are included in the additional resources – see below and at the end of the module).

If the person you care for does not have capacity to make informed decisions:

- you, a family member or friend may need to make an application to your state or territory Guardianship or Civil and Administrative Tribunal to become their guardian
- you can contact your state or territory Public Guardian to ask them if they can become their guardian.

The tribunal can make an individual or the Public Guardian the guardian for the person you care for.



Enduring power of guardianship or equivalent



Tips

Some things for the person you care for if they have capacity to make informed decisions:

- most people have more than one guardian
- if they have more than one guardian they will need to decide if they can act independently or only through joint agreement
- whether or not they want to have any restrictions
- their enduring power of guardianship can only be used:
 - in the state or territory where it has been signed and witnessed
 - states or territories which have mutual recognition legislation, for example NSW
 - if the document is not recognised in another state or territory you can make an application to that state or territory's Guardianship or Civil and Administrative Tribunal for recognition of the document or, if the person still has capacity, to make a new one in that state or territory
 - a table is included in the resources which shows which states/territories enduring guardianship documents are operational in – see below and at the end of the module.



After mum died, dad appointed my sister, Pina, and I as his enduring guardians so that when the time came we could help with managing his health and living arrangements. Thankfully, Pina and I work well together and as his dementia has deteriorated we have been able to make sure dad gets the best healthcare possible and he continues to live as he wants to live.

George (49), carer to father Rafael (75) with depression, diabetes and vascular dementia.

Some tips for you if you are a guardian for the person you care for:

- photocopy several copies of the document and have them certified by a Justice of the Peace
- give a certified copy of the document to the person you care for's:
 - GP
 - other health professionals
 - service providers
 - family members and friends involved in their care.

Enduring power of guardianship or equivalent



Additional resources

- Power of attorney, enduring guardianship and advance care directive/plan – State and territory recognition:
<https://www.australia.gov.au/information-and-services/family-and-community/wills-and-powers-of-attorney/powers-of-attorney>
- guardianship:
<https://www.carergateway.gov.au/guardianship>
- working with professionals:
<https://www.carergateway.gov.au/working-with-professionals>
- mental health: rights and responsibilities:
<https://www.carergateway.gov.au/mental-health-rights-and-responsibilities-of-carers>
- what to do when someone refuses help:
<https://www.carergateway.gov.au/what-to-do-when-someone-refuses-help>
- Public Guardian, Public Advocate or Adult Guardian across Australia:
<https://www.advokit.org.au/decision-making/public-advocates/>
- Children's Advocates, Commissioners and Guardians across Australia:
<https://www.acyp.nsw.gov.au/about/australian-commissioners-and-guardians>
- legal aid: <https://www.australia.gov.au/content/legal-aid>

What do I need to follow-up?

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My Health Record

A My Health Record is an online summary of a person's key health information. It includes information from the person, their healthcare providers and Medicare and can include information about:

- medical conditions and treatments
- medicine details
- allergies
- test and scan results.

My Health Records can only be accessed via MyGov. A link to a video which shows you how to access your My Health Record is included in the additional resources – see below and at the end of the module.

My Health Record for carers

Having a My Health Record means carers don't need to remember all the details of the health history and medications of the person they care for. With permission, My Health Record makes it easier:

- for carers to keep track of the health information of those they care for
- to move between healthcare providers without having to repeat all the details of the person's medical history on every visit
- for healthcare providers as they have a more complete picture to inform clinical decisions
- in an emergency because healthcare providers can view key information including allergies and current medications resulting in safer and better healthcare for those with special care needs.



Managing a My Health Record

As a carer you can:

- with permission, be listed as a nominated representative, which means you can view and manage the person you care for's My Health Record on their behalf
- apply to become an authorised representative, which means that you can manage the My Health Record of the person you care for if they can't manage their own record.

Privacy and security controls

You can control who can see your health information by:

- setting a **record access code** to give access to selected healthcare organisations
- controlling access to specific documents, known as a **limited document access code**
- giving access to a nominated representative such as a family member, close friend or carer, known as a **personal access code**.

Children's records are managed by an authorised representative, usually a parent or legal guardian.

My Health Record



Information from healthcare professionals

Healthcare providers can add clinical documents including:

- an overview of your health uploaded by the person's doctor
- hospital discharge summaries
- reports from tests and scans
- medications
- referral letters.

Information from Medicare

Up to two years of Medicare data may be added including:

- Medicare, Pharmaceutical Benefits Scheme and Repatriation Pharmaceutical Benefits Scheme information
- organ donation decisions
- immunisations that are included in the Australian Immunisation Register.

Information you can add to your record

You, or someone authorised to represent you, can add additional information, for example:

- contact numbers and emergency contact details
- current medications
- allergy information including any previous allergic reactions
- indigenous status
- Veterans' or Australian Defence Force status
- your advance care directive/plan or contact details of your custodian
- your emergency care plan for the person you care for.



Uploading old tests and scans

Only new reports can be uploaded by participating pathology laboratories or diagnostic imaging providers.

You can talk to your doctor about including past health information such as results from previous tests or scans into your shared health summary.

My Health Record



Additional resources

- My Health Record:
<https://www.myhealthrecord.gov.au>
- log in to your My Health Record video:
<https://www.myhealthrecord.gov.au/for-you-your-family/howtos/log-in>
- My Health Record for carers:
<https://www.myhealthrecord.gov.au/for-carers>
- control access to your record:
<https://www.myhealthrecord.gov.au/for-you-your-family/howtos/control-access-your-record>
- set an access code on your record:
<https://www.myhealthrecord.gov.au/for-you-your-family/howtos/set-access-code>
- invite a nominated representative:
<https://www.myhealthrecord.gov.au/for-you-your-family/howtos/manage-my-privacy-and-security/allow-others-view-my-record/give-someone-access>
- access a record as a nominated representative:
<https://www.myhealthrecord.gov.au/for-you-your-family/howtos/view-someones-record-nominated-representative>
- become an authorised representative:
<https://www.myhealthrecord.gov.au/for-you-your-family/howtos/become-an-authorised-representative>
- manage a record as an authorised representative:
<https://www.myhealthrecord.gov.au/for-you-your-family/howtos/manage-record-authorised-representative>



I've been taking Sam to the GP and other medical appointments for a long time now. It was good to read through this information and learn more about how My Health Record can help. If I'm honest, I wasn't too sure about it at first – but after reading this information, Sam and I had a chat about it, and we've decided to give it a shot. The verdict ... so far, so good – I haven't had to remember to bring all his medical reports or repeat myself when we meet each new health professional. Using My Health Record has streamlined things for us and it has definitely made medical appointments a lot easier. Sam is even considering going to an appointment on his own as he said it feels less stressful to go to appointments as the doctors will have everything they need on My Health Record.

Lachlan (23), brother to Sam (20) with Tourette Syndrome and generalised anxiety disorder.

What do I need to follow-up?

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Advance care directive/plan

What is an advance care directive/plan?

An advance care directive/plan records a person's wishes and instructions for their:

- future medical treatment or health care
- end-of-life
- preferred living arrangements and other personal matters.

In most states and territories, it can also be used to appoint substitute decision-maker/s to make decisions if the person is unable to make their own decisions.

The rules and terminology for advance care directives vary by state and territory.

Why have an advance care directive/plan?

Having an advance care directive/plan helps the person, their family, carers, health professionals and associated organisations. It:

- makes sure the person receives care that is consistent with their beliefs, values and preferences
- reduces unnecessary treatments and hospitalisations, especially at the end-of-life
- may improve end-of-life care, including more appropriate palliative care
- reduces anxiety and stress for the person's family and friends related to medical decision-making

Involving family and friends in these discussions means they will know why the person made the decisions that they did.



What is a substitute decision-maker?

A substitute decision-maker is a person/s appointed to make decisions on behalf of another person in their advance care directive/plan.

The substitute decision-maker's decisions must be made in line with the advance care directive/plan unless circumstances have changed or could not have been foreseen by the maker.

Advance care directive/plan



Does the person I care for need an advance care directive/plan?

Advance care planning is important for people who:

- are older and are frail
- have a chronic illness or multiple diseases
- have an early cognitive impairment.

It is a good idea for healthy people to think about their health and care preferences and discuss them with their family, friends and/or healthcare team.

How does the person I care for arrange an advance care directive/plan?

If the person you care for has capacity to make informed decisions they can:

- see their solicitor
- download forms for their state/territory (the website links are included in additional resources – see below and at the end of the module).
- If the person you care for does not have capacity to make informed decisions then:
 - if they have previously legally appointed a substitute decision-maker (for example an enduring power of attorney) there are certain documents that can be completed on the person's behalf
 - the person you care for can be involved in advance care planning conversations through supported decision-making, for example they may be able to discuss their overall values and what they think is a reasonable outcome
 - you, a family member or friend may need to make an application to your state or territory Guardianship or Civil and Administrative Tribunal.



The rules for the treatment of people without capacity to complete an advance care directive/plan vary by state and territory.

Will the advance care directive/plan apply in other states and territories?

In general, an advance care directive/plan will apply in other states and territories but there may be some limitations and additional requirements. You should get advice from your state or territory's Public Guardian. A table is included in the resources which shows which states/territories advance care directives/plans are operational in – see below and at the of the module.

Advance care directive/plan



If you regularly receive treatment in another state or territory or are permanently moving to another state or territory, the advance care directive/plan should be updated using the recommended form/s for that state or territory.

Tips

Some tips for the person you care for if they have capacity to make informed decisions:

- most people have more than one substitute decision-maker
- if they have more than one substitute decision-maker they will need to decide if they can act independently or only through joint agreement
- whether or not they want to have any restrictions.

Some tips for you if you are a substitute decision-maker:

- photocopy several copies of the document and have them certified by a Justice of the Peace
- give a certified copy of the document to those involved with the person you care for, for example their:
 - GP
 - specialist/s
 - residential aged care facility
 - hospital

A copy of the directive/plan can be uploaded onto the person you care for's My Health Record and to their My Aged Care client record via MyGov.

Additional resources

- Power of attorney, enduring guardianship and advance care directive/plan – State and territory recognition:
<https://www.australia.gov.au/information-and-services/family-and-community/wills-and-powers-of-attorney/powers-of-attorney>
- advanced care planning:
<https://www.carergateway.gov.au/advanced-care-planning>
- working with professionals:
<https://www.carergateway.gov.au/working-with-professionals>
- Advance Care Planning Australia website, which has links to each state and territory:
<https://www.advancecareplanning.org.au/resources/advance-care-planning-for-your-state-territory>
- End of Life Law in Australia, which has specific information for each state and territory:
<https://end-of-life.qut.edu.au/advance-directives/state-and-territory-laws>

Advance care directive/plan



When she was diagnosed, the doctors told us that we had less than a year left with mum. At the time, we all got together to make a plan for the months to come. In doing so, mum told us when and how she wanted the treatment to stop. So we made sure that we developed an advanced care plan for when that time came. It has been hard for her brothers and sisters to understand her choices, but it helps us all to know that mum made this decision and, it's our job to make sure that everything goes according to her plan.

Sally (34), carer to her mother Joan (62) with pancreatic cancer.

What do I need to follow-up?

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Carer Recognition Act

The Australian Government passed the Carer Recognition Act in 2010 to formally recognise and raise awareness of the valuable social and economic contribution of carers. Most states and territories also have carer recognition legislation.

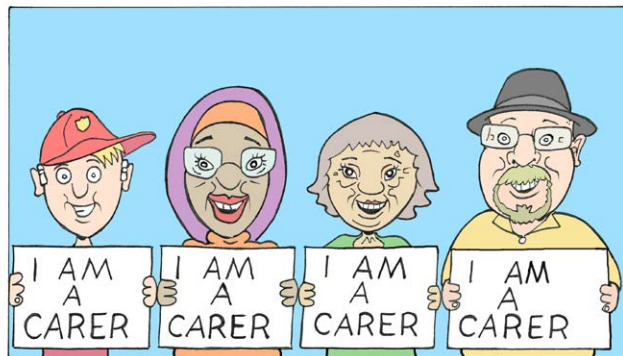
The Act includes a:

- definition of a “carer”
- Statement for Australia’s Carers which sets out key principles on how carers should be treated.

The Act does not establish carers’ rights or duties.

The Act requires public service agencies and their service providers (including people or bodies contracted or funded by public service agencies) to:

- be a carer friendly employer
- reflect the principles of the Statement for Australia’s Carers when developing, implementing and evaluating care supports
- consult carers and bodies that represent carers when developing or evaluating care supports
- report annually on their compliance to the Act.



If the Carer Recognition Act doesn’t establish rights or duties why have it?

In 2009, the House of Representatives Standing Committee on Family, Community, Housing and Youth recommended that the government develop:

- national carer recognition legislation
- a national carer strategy.
- The Committee received evidence emphasising the need to develop a legislative and policy framework to:
- raise the profile of carers
- provide the basis to develop nationally consistent policy, programs and services that better meet the needs of carers.

The Australian Public Service developed the Carer Recognition Act 2010 Guidelines to make sure public service agencies and their service providers understood their responsibilities under the Act.

Carer Recognition Act



Statement for Australia's Carers

The Statement has the following 10 principles.

1. All carers should have the same rights, choices and opportunities as other Australians, regardless of age, race, sex, disability, sexuality, religious or political beliefs, Aboriginal or Torres Strait Islander heritage, cultural or linguistic differences, socioeconomic status or locality.
2. Children and young people who are carers should have the same rights as all children and young people and should be supported to reach their full potential.
3. The valuable social and economic contribution that carers make to society should be recognised and supported.
4. Carers should be supported to enjoy optimum health and social wellbeing and to participate in family, social and community life.
5. Carers should be acknowledged as individuals with their own needs within and beyond the caring role.
6. The relationship between carers and the persons for whom they care should be recognised and respected.
7. Carers should be considered as partners with other care providers in the provision of care, acknowledging the unique knowledge and experience of carers.
8. Carers should be treated with dignity and respect.
9. Carers should be supported to achieve greater economic wellbeing and sustainability and, where appropriate, should have opportunities to participate in employment and education.
10. Support for carers should be timely, responsive, appropriate and accessible.

Treating carers as partners

In relation to principles 6 and 7, while the Act encourages carers to be treated as partners with other care providers as best practice, carers have no ability to enforce this if they are being excluded.

Carer Recognition Act



Additional resources

- Carer Recognition Act 2010 :
<https://www.legislation.gov.au/Details/C2010A00123>
- legal rights for carers:
<https://www.carergateway.gov.au/legal-rights-for-carers>
- Am I a carer?:
<https://www.carergateway.gov.au/am-i-a-carer>



It was really good to read this – it wasn't around when my kids were teenagers – but I'm glad to know that carers are being formally recognised. I want to read more about how it supports my family's needs.

Cheryl (56), carer and parent to her son Daniel (33) who abuses substances and daughter Lily (29), who has generalised anxiety disorder.

What do I need to follow-up?

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Duty of care

What does “duty of care” mean?

“Duty of care” is a legal responsibility to take reasonable care to avoid injury to another person that could reasonably be foreseen. It is taking responsibility for yourself and others when they are relying on you.

A duty of care exists where someone’s actions could reasonably be expected to affect other people, particularly where there is a relationship of power between two people, for example between an employer and employee or between carers and the people they care for.

What is a “breach” of duty of care?

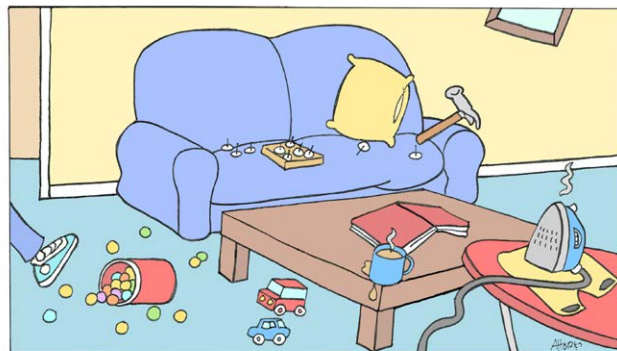
A breach of duty of care is failing to do what is reasonable, or doing something that is unreasonable.

A duty of care can be breached either by action or inaction. This means that as a carer you must identify risks for the person you care for and take action to prevent them coming to harm. Harm can be:

- physical
- mental
- emotional
- financial.

What does “reasonable” mean?

A key word in duty of care is “reasonable” and what is reasonable will depend on the circumstances. The question you should ask yourself is “What would another person with similar knowledge and experience do in this situation?”



When a person needs a very high level of care, the standard of care reasonably expected will be higher because of the more advanced care.

When a person needs less care, a lower standard is expected of the carer.

Medication example of “reasonable”

An example of “reasonable” is where Paul has been taking the wrong medication, resulting in an increase in health issues. If Paul’s carer provides a very high level of care which includes buying and helping with Paul’s medication, this would probably be a breach of the carer’s duty of care.

This is because it would be expected of a reasonable person in the carer’s position that they would make sure Paul was taking the prescribed medication.

If the carer only helps Paul with housework and grocery shopping and Paul managed his own medication, then the carer would probably:

- not have a duty of care to make sure Paul was taking the correct medication
- have no responsibility or liability to Paul in those circumstances.

Duty of care

Duty of care owed by the person being cared for

The person being cared for may also have a duty of care to their carer.

People have a general duty to take reasonable care to prevent potential risks of injury to others, including carers.

What should I and the person I care for do?

In situations where a carer or the person they care for has a duty of care, they must take appropriate steps to reduce or eliminate the risk of harm.

For **carers**, this could be:

- making sure that:
 - appropriate medication/equipment is kept on hand that can help in a life-threatening situation
 - there are no trip, fall or slip hazards
 - appropriate equipment is provided, you and any other carers are trained in how to use it, it is used properly and it is in good working order
- caring for the person to the standard their condition needs, for example:
 - if you give medication, you understand what the medication is administered for, read and follow the instructions and understand what the potential side effects and adverse reactions are and what to do if they occur
 - the person you care for is appropriately supervised at all times
 - if the person has difficulty swallowing food, the food is small enough not to be a choking hazard.



- replacement carers, such as family and friends, are appropriately trained.

For the person being **cared for** this could include making sure:

- their home is hazard free – a resource has been developed to help you prevent hazards in and around the home
- there is a safe environment for their carer/s to work in – a resource has been developed to help identify safety risks
- appropriate equipment is provided, their carers are trained in how to use it, it is used properly and it is in good working order.

Duty of care



Self-managed funding, including NDIS packages

If a carer or the person being cared for self-manages their funding they could have duty of care obligations as an employer.

If you self-manage and directly employ people you should make sure:

- the home where the services are delivered is hazard free – a resource has been developed to help you prevent hazards in and around the home
- appropriate equipment is provided, the service providers are trained in how to use it, it is used properly and it is in good working order
- there is a safe environment for the workers to work in – a resource has been developed to help identify safety risks
- you have all the appropriate insurances
- you advise your building and contents insurers that the services are provided in the home.

Additional resources

- See the additional resources section at the end of this module
- legal aid: <https://www.australia.gov.au/content/legal-aid>



These terms are new to me, but the care element isn't. I've always monitored dad's symptoms and made sure that he is taking his medication. Whenever I find that he is off his meds I will always try to talk to him about it first, so that we can go to see his doctors together. I think it will be helpful to read through this module with him so that he understands that I am not trying to nag him ... but instead I love him. I want him to be safe and understand that I have a 'duty of care'.

Renee, 22. Carer to her father (48) with schizophrenia.

What do I need to follow-up?

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Privacy and confidentiality

Privacy and confidentiality for the person you care for

The person you care for has a legal right for their privacy to be respected. This right is protected under the:

- Privacy Act (Commonwealth), which includes the Australian Privacy Principles
- state and territory privacy legislation
- My Health Records Act.

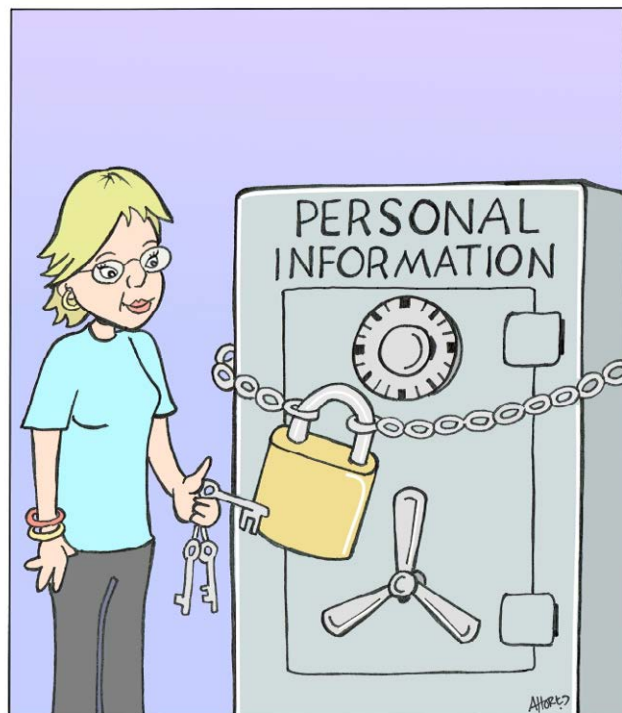
These acts control how a person's personal information is handled. Personal information is information about a person that can reasonably identify that person and includes:

- name
- birth date
- address
- telephone numbers
- financial information including their tax file number
- medical information.

These acts prevent many organisations from disclosing personal or sensitive information, for example:

- banks and other financial institutions
- insurers
- utility companies
- government organisations
- healthcare providers
- service providers.

It is important for carers to be respectful of the privacy and confidentiality of the person they care for.



Privacy in relation to healthcare and support services

Carers sometimes find themselves excluded from discussions or not consulted separately about healthcare and support services for the person they care for. This is particularly frustrating for carers when they are expected to be involved in subsequent care.

For carers to be part of these conversations they need either:

- consent from the person they care for
- enduring guardianship
- an exception which allows a healthcare provider to include you.

Privacy and confidentiality



Consent

The easiest way for you to be included in any conversation is for the person you care for to give their consent for their health and personal information to be given to you.

Where clear consent is given, there should not be any reason for organisations to exclude you.

Exceptions

There are some exceptions under the Australian Privacy Principles and My Health Records Act which allow organisations to include you in these conversations.

Exception – secondary purpose

The first exception is where the person you care for would reasonably expect the organisation to disclose the information to you “for a secondary purpose which is directly related to the original purpose of collection of that information”.

For example, if the person you care for underwent brain surgery, it is reasonable to expect that further treatment, by way of medication, could be needed after their discharge from hospital. It is also reasonable to expect that a carer would help with medication management and other care. The carer’s secondary purpose, of providing ongoing care, is directly related to the original purpose and healthcare information could legally be disclosed.

Carers and the people they care for should make sure that they are open and upfront with their healthcare providers about the help given by the carer and the need for the carer to know certain information.



Exception – permitted health situation

For a “permitted health situation” to occur the:

- person you care for must be incapable of giving consent
- healthcare provider must be satisfied that the disclosure to the carer is:
 - necessary to provide appropriate care or treatment; or
 - made for compassionate reasons
- the carer must be a “responsible person”.

Privacy and confidentiality

To be a “responsible person”, the carer must have one of the following relationships with the person they care for:

- parent
- child or sibling, where the carer is over 18
- spouse or de facto partner
- relative over 18 who is a member of the same household
- guardian
- person exercising an enduring power of attorney
- substitute decision-maker in an advance care directive/plan
- person who has an intimate personal relationship
- person nominated to be contacted in the case of an emergency.

The disclosure:

- must not be contrary to any wish expressed by the person you care for prior to them becoming unable to give consent
- is limited to the extent necessary for appropriate care or treatment.

The power to disclose for a “permitted health situation” is broad and should allow disclosure to the carer (as long as the situation meets the criteria outlined above) in most cases where consent cannot be given.

In each situation the carer needs to satisfy the healthcare provider that the disclosure to them is necessary for the ongoing care and treatment for the person they care for.



Exception – permitted general situation

Another exception is where a “permitted general situation” exists such as where it is unreasonable to get consent and the disclosure is necessary to lessen or prevent a serious threat to the life, health or safety.

An example of this is where the person you care for has had an accident and can’t give consent. You urgently need to make a decision, which requires being given relevant health information.

Privacy and confidentiality



Disclosure at healthcare provider's discretion

Whether to disclose or not is still up to the healthcare provider. The healthcare provider usually can't be forced to give the information. However, you could force disclosure if you have guardianship or an enduring power of attorney over the person you care for and you need health information to make an informed decision.

Additional resources

- what is advocacy:
<https://www.carergateway.gov.au/what-is-advocacy>
- working with professionals:
<https://www.carergateway.gov.au/working-with-professionals>
- Australian Privacy Principles :
<https://www.oaic.gov.au/resources/individuals/privacy-fact-sheets/general/privacy-fact-sheet-17-australian-privacy-principles.pdf>
- your privacy and confidentiality:
<https://www.carergateway.gov.au/your-privacy-and-confidentiality>

What do I need to follow-up?

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Work

Many carers work in paid employment. Juggling working and caring is not always easy. Working carers include people who work full-time, part-time, casual or on contract, as well as business owners.

Carers say that working gives them balance outside their caring role. They have a separate network of contacts, can socialise and experience new things. This balance can make them a more effective carer.

Your rights as an employee

Your work conditions are protected by:

- state/territory and federal anti-discrimination laws
- state/territory and federal employment awards specific to your type of employment, for example retail
- Australia-wide Fair Work Act.

Some state, territory and federal discrimination laws as well as the Fair Work Act protect you from being discriminated against by anyone in your workplace because you have caring responsibilities, or an association with a disabled person. Discrimination can include:

- less favourable treatment than someone who does not have caring responsibilities
- harassment
- demotion
- less favourable shifts
- dismissal or threatened dismissal.



The Fair Work Act, amongst other things, covers:

- leave
- flexible working arrangements.

Leave

The Fair Work Act states that:

- all employees, except casuals, are entitled to paid sick and carer's leave
- all employees, including casual employees, are entitled to two days unpaid carer's leave per occurrence and where the person requiring care is a member of your household or a member of your immediate family

Work

- all employees, including casual employees, are entitled to two days unpaid compassionate leave (also known as bereavement leave) where the person that has passed away, or suffered a life threatening injury is a member of your household or a member of your immediate family.

Flexible working arrangements

The Act also states that you can ask for flexible working arrangements if you:

- are responsible for the care of a child of school age or younger
- are a carer as defined by the Carer Recognition Act 2010
- have a disability
- are aged 55 years or older
- are experiencing violence from a member of your family
- are caring or supporting someone in your family or immediate household who is experiencing violence from a member of their family.

You can ask for:

- shorter hours
- different hours, for example earlier or later start or finish
- job-sharing or working split shifts
- to work from home, a different office or somewhere else.

You must have worked continuously for at least 12 months with your employer before making the request in writing. Conditions are slightly different for casual workers.



Even if you think you don't meet the criteria, it may be worth discussing your needs with your employer to see if flexible arrangements can be provided.

Your employer must respond within 21 days to your request, but can refuse the request on reasonable business grounds.

Carer Gateway has further information about:

- how to make a request
- what happens after a request is made
- what to do if your employer says no
- where to find more information.

Work



Talking with your employer

From time-to-time you might need to talk to your employer about how to balance being an employee and carer.

Most workplaces offer support such as employee assistance programs. You may want to speak with your human resources staff, manager or business owner.

Carer Gateway has further information about:

- what to do before talking to your employer
- what to do if you can't reach an agreement with your employer.

Bullying

Bullying is very common. Nearly one in 10 Australian people have reported being bullied at work.

Bullying is when a person or group of people repeatedly and deliberately use words or actions to hurt someone (physically, verbally and/or emotionally). Bullies are often people who have power or control over someone.

It can happen anywhere – at work, home, online, or via text messaging, email, Instagram, Facebook or other social media sites. It can range from repeated teasing and/or verbal abuse to being excluded and physically assaulted.

People who are bullied may feel ashamed and embarrassed and can become lonely, anxious, depressed and are more likely to have suicidal thoughts.

Carer Gateway has information about how to deal with bullying, including links to other helpful websites.



Work



Additional resources

- your rights as a working carer:
<https://www.carergateway.gov.au/your-rights-as-a-working-carer>
- legal rights for carers:
<https://www.carergateway.gov.au/legal-rights-for-carers>
- your privacy and confidentiality:
<https://www.carergateway.gov.au/your-privacy-and-confidentiality>
- Fair Work Act:
<https://www.legislation.gov.au/Details/C2016C00050>
- Australian, state and territory discrimination legislation factsheet:
<https://www.humanrights.gov.au/employers/good-practice-good-business-factsheets/quick-guide-australian-discrimination-laws>
- complaints:
 - Fair Work Ombudsman:
<https://www.fairwork.gov.au>
 - Human Rights Commission:
<https://www.humanrights.gov.au/complaint-information>



It has been a rollercoaster few months, but these modules have been helpful to know my rights and responsibilities. As a result, I have been able to organise carers leave through my work so that I can be at home to care for Jane and our 10 month old son, while Jane receives treatment.

Ian (35), carer to wife, Jane (28) who has been receiving treatment for breast cancer.

What do I need to follow-up?

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Checklist



Topic	Follow-Up	No Follow-Up	Priority
Capacity to make decisions (see page 7)			
Who can give consent (see page 11)			
Power of attorney or equivalent (see page 13)			
Enduring power of guardianship or equivalent (see page 17)			
My Health Record (see page 21)			
Advance care directive/plan (see page 24)			
Duty of care (see page 31)			
Privacy and confidentiality for the person you care for (see page 34)			
Work (see page 38)			

Glossary of terms



In this module:

advance care directive/plan – records a person's wishes and instructions for their:

- future medical treatment or health care
- end-of-life
- preferred living arrangements and other personal matters.

attorney – is the person/s appointed to act on another person's behalf in their power of attorney document.

breach of duty of care – is failing to do what is reasonable, or doing something that is unreasonable. A duty of care can be breached either by action or inaction. This means that as a carer you must identify risks for the person you care for/other people and take action to prevent them coming to harm.

capacity – describes a person's ability to make a decision about:

- medical/health care
- finances
- personal matters, for example where to live, what support or services they will need
- legal matters, for example making an advance care directive or will, entering into contracts.

consent – is the action of making a decision. A person cannot give their consent if they do not have capacity to make an informed decision.

duty of care – is a legal responsibility to take reasonable care to avoid injury to another person that could reasonably be foreseen. It is taking responsibility for yourself and others when they are relying on you.

enduring power of guardianship – is a legal document that:

- gives a person/s of your choice the power to make personal, lifestyle and health decisions on your behalf if you become incapable of making these decisions for yourself
- only comes into effect when the person no longer has capacity to make informed or reasoned decisions.

enduring guardian – is the person/s appointed to make decisions on behalf of another person in their enduring power of guardianship document.

financial manager – is a person/s appointed by a state or territory Guardianship or Civil and Administrative Tribunal to make decisions on another person's behalf about their finances, legal matters and asset management.

guardian – is the person/s appointed by a state or territory Guardianship or Civil and Administrative Tribunal to make decisions on another person's behalf about their personal, lifestyle and health matters.

informed or reasoned decision – a person who is making a decision must be able to:

- understand the information and the choices they have
- understand the consequences of decisions
- make a decision based on this information
- retain the information, even for a short time
- communicate the decision in some way.

My Health Record – is an online summary of a person's key health information and includes information from the person, their healthcare providers and Medicare.

Glossary of terms



power of attorney – is a legal document that gives a person/s the power to make legally binding decisions on another person's behalf about their finances, legal matters and asset management.

reasonable – a key word in duty of care and what is reasonable will depend on the circumstances and is based on "What another person with similar knowledge and experience do in this situation."

substitute decision-maker – is a person/s appointed to make decisions on behalf of another person in their advance care directive/plan.

supported decision-making – is when a person/s supports another person to make a decision by explaining all the relevant information and options in a way that's easier for them to understand, for example:

- using plain language and simple sentences
- using pictures or photos
- writing it down
- using technology
- finding a quiet comfortable place
- getting an interpreter.

Additional resources



The following resource has been developed:

- Power of attorney, enduring guardianship and advance care directive/plan – State and territory recognition
- Preventing hazards in and around the home

Capacity to make informed decisions

- working with professionals
<https://www.carergateway.gov.au/working-with-professionals>
- what to do when someone refuses help
<https://www.carergateway.gov.au/what-to-do-when-someone-refuses-help>
- legal services
<https://www.carergateway.gov.au/legal-services>
- legal aid
<https://www.australia.gov.au/content/legal-aid>

Who can give consent

- working with professionals
<https://www.carergateway.gov.au/working-with-professionals>

Power of attorney or equivalent

- power of attorney
<https://www.carergateway.gov.au/power-of-attorney>
- working with professionals
<https://www.carergateway.gov.au/working-with-professionals>
- mental health: rights and responsibilities
<https://www.carergateway.gov.au/mental-health-rights-and-responsibilities-of-carers>

- what to do when someone refuses help
<https://www.carergateway.gov.au/what-to-do-when-someone-refuses-help>
- legal services
<https://www.carergateway.gov.au/legal-services>
- Powers of Attorney Australia
<https://www.australia.gov.au/content/powers-of-attorney>
- Public Trustees Australia, which includes links to all state and territory organisations
<https://www.publictrusteesaustralia.com/>
- Australian Guardianship and Administration Council <https://www.agac.org.au/links>
- legal aid
<https://www.australia.gov.au/content/legal-aid>

Enduring guardianship or equivalent

- guardianship
<https://www.carergateway.gov.au/guardianship>
- working with professionals
<https://www.carergateway.gov.au/working-with-professionals>
- mental health: rights and responsibilities
<https://www.carergateway.gov.au/mental-health-rights-and-responsibilities-of-carers>
- what to do when someone refuses help
<https://www.carergateway.gov.au/what-to-do-when-someone-refuses-help>
- legal services
<https://www.carergateway.gov.au/legal-services>

Additional resources



- Public Guardian, Public Advocate or Adult Guardian across Australia
<https://www.advokit.org.au/decision-making/public-advocates/>
- Children's Advocates, Commissioners and Guardians across Australia
<https://www.acyp.nsw.gov.au/about/australian-commissioners-and-guardians>
- legal aid
<https://www.australia.gov.au/content/legal-aid>

My Health Record

- My Health Record
<https://www.myhealthrecord.gov.au>
- log in to your My Health Record video
<https://www.myhealthrecord.gov.au/for-you-your-family/howtos/log-in>
- My Health Record for carers
<https://www.myhealthrecord.gov.au/for-carers>
- control access to your record
<https://www.myhealthrecord.gov.au/for-you-your-family/howtos/control-access-your-record>
- set an access code on your record
<https://www.myhealthrecord.gov.au/for-you-your-family/howtos/set-access-code>
- invite a nominated representative
<https://www.myhealthrecord.gov.au/for-you-your-family/howtos/manage-my-privacy-and-security/allow-others-view-my-record/give-someone-access>
- access a record as a nominated representative <https://www.myhealthrecord.gov.au/for-you-your-family/howtos/view-someones-record-nominated-representative>

- become an authorised representative
<https://www.myhealthrecord.gov.au/for-you-your-family/howtos/become-an-authorised-representative>
- manage a record as an authorised representative
<https://www.myhealthrecord.gov.au/for-you-your-family/howtos/manage-record-authorised-representative>

Advance care directive/plan

- advanced care planning
<https://www.carergateway.gov.au/advanced-care-planning>
- working with professionals
<https://www.carergateway.gov.au/working-with-professionals>
- Advance Care Planning Australia website, which has links to each state and territory
<https://www.advancecareplanning.org.au/resources/advance-care-planning-for-your-state-territory>
- End of Life Law in Australia, which has specific information for each state and territory
<https://end-of-life.qut.edu.au/advance-directives/state-and-territory-laws>

Carer Recognition Act

- Carer Recognition Act 2010
<https://www.legislation.gov.au/Details/C2010A00123>
- legal rights for carers
<https://www.carergateway.gov.au/legal-rights-for-carers>
- Am I a carer?
<https://www.carergateway.gov.au/am-i-a-carer>

Additional resources



Duty of care

- legal aid
<https://www.australia.gov.au/content/legal-aid>

Privacy and confidentiality for the person you care for

- what is advocacy
<https://www.carergateway.gov.au/what-is-advocacy>
- working with professionals
<https://www.carergateway.gov.au/working-with-professionals>
- Australian Privacy Principles
<https://www.oaic.gov.au/resources/individuals/privacy-fact-sheets/general/privacy-fact-sheet-17-australian-privacy-principles.pdf>
- your privacy and confidentiality
<https://www.carergateway.gov.au/your-privacy-and-confidentiality>

Work

- your rights as a working carer
<https://www.carergateway.gov.au/your-rights-as-a-working-carer>
- legal rights for carers
<https://www.carergateway.gov.au/legal-rights-for-carers>
- your privacy and confidentiality
<https://www.carergateway.gov.au/your-privacy-and-confidentiality>
- Fair Work Act
<https://www.legislation.gov.au/Details/C2016C00050>
- Australian, state and territory discrimination legislation factsheet
<https://www.humanrights.gov.au/employers/good-practice-good-business-factsheets/quick-guide-australian-discrimination-laws>
- complaints:
 - Fair Work Ombudsman
<https://www.fairwork.gov.au>
 - Human Rights Commission
<https://www.humanrights.gov.au/complaint-information>

State/territory recognition

Enduring Power of Attorney, Enduring Guardian and Advance Care Directive/Plans

State/Territory Recognition

Australia Capital Territory	ACT	NSW	NT	Qld	SA	Tas	Vic	WA
Enduring power of attorney	X	X	X	X	X	X	X	SAT ¹
Enduring guardian	X	X	CAT ²	QCAT ³	⁴	GAB ⁵	VCAT ⁶	SAT
Health direction	X		X		X		X	SAT
New South Wales	ACT	NSW	NT	Qld	SA	Tas	Vic	WA
Enduring power of attorney	X	X	X	X	X	X	X	SAT
Enduring guardian	ACAT ⁷	X	CAT	QCAT				SAT
Advance care directive		X					X	
Northern Territory	ACT	NSW	NT	Qld	SA	Tas	Vic	WA
Enduring power of attorney	X	X	X	X	X	X	X	SAT
Enduring guardian	ACAT	X	X	QCAT		GAB	VCAT	SAT
Advance personal plan			X		X		X	SAT
Queensland	ACT	NSW	NT	Qld	SA	Tas	Vic	WA
Enduring power of attorney	X	X	X	X	X	X	X	SAT
Enduring guardian	ACAT	X	CAT	X		GAB	VCAT	SAT
Advance health directive			X	X	X		X	SAT
South Australia	ACT	NSW	NT	Qld	SA	Tas	Vic	WA
Enduring power of attorney	X	X	X	X	X	X	X	SAT
Enduring guardian	ACAT	X	CAT	QCAT	X	GAB	VCAT	SAT
Advance care directive			X		X		X	SAT
Tasmania	ACT	NSW	NT	Qld	SA	Tas	Vic	WA
Enduring power of attorney	X	X	X	X	X	X	X	SAT
Enduring guardian	ACAT	X	CAT	QCAT		X	VCAT	SAT
Advance health directive						X		
Victoria	ACT	NSW	NT	Qld	SA	Tas	Vic	WA
Enduring power of attorney	X	X	X	X	X	X	X	SAT
Enduring guardian	ACAT	X	CAT	QCAT		GAB	X	SAT
Advance care directive					X		X	SAT
Western Australia	ACT	NSW	NT	Qld	SA	Tas	Vic	WA
Enduring power of attorney	X	X	X	X	X	X	X	X
Enduring guardian	ACAT	X	CAT	QCAT		GAB	VCAT	X
Advance health directive					X		X	X

State/territory recognition



Enduring Power of Attorney, Enduring Guardian and Advance Care Directive/Plans

State/Territory Recognition

1. Western Australia the State Administrative Tribunal (SAT) can make an order recognising an instrument made outside WA.
2. Civil and Administrative Tribunal (CAT) in the Northern Territory can register an interstate guardianship order.
3. Queensland Civil and Administrative Tribunal (QCAT) can register an interstate guardianship order.
4. South Australia, the Minister may enter into arrangements with other states and territories for the recognition of interstate guardianship orders.
5. Tasmania interstate guardianship orders must be registered with the Guardianship and Administration Board (GAB).
6. Victorian Civil and Administrative Tribunal (VCAT) can register an interstate guardianship order.
7. ACT Civil and Administrative Tribunal (ACAT) can register an interstate guardianship order.

Home safety checklist

It is important to have a falls hazard free home, especially if:

- the person you care for has a mobility or vision impairment
- services are provided in the person being cared for's home.

Research shows that about 25 percent of all injuries in Australia requiring hospitalisation occur in or around the home. Many of these accidents are preventable.

Falls are the leading cause of hospitalisation injuries in Australia. Young children and the elderly are most at risk of falls but teenagers and adults are at risk too.

Checklist

The checklist helps you identify potential hazards in each room and makes suggestions about how to fix the problem.

Floors – look at the floor in each room

- *When you walk through a room, do you have to walk around furniture?*

Move the furniture so the path is clear.

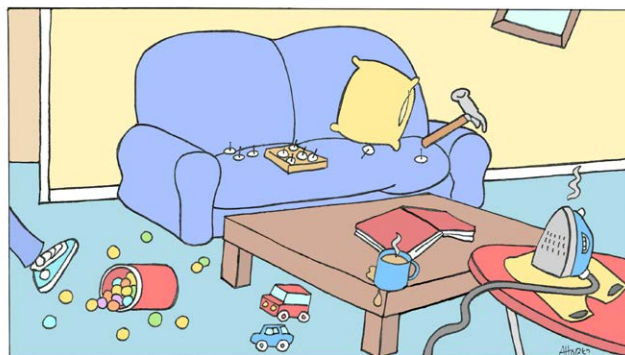
- *Are the floor coverings non-slip and in good condition?*

Torn carpets, carpet joins, loose tiles, polished floors and tiles can cause slips and trips. Repair damaged carpets and tiles, either remove rugs/mats or anchor with double-sided tape and use slip resistant treatments on the walkways.

- *Are there rugs/mats on the floor?*

Remove the rugs/mats or use double-sided tape or a non-slip backing so they won't slip.

- *Is there uneven flooring?*



Install mini-ramps for uneven flooring at doors and use coloured tape to alert people to changes in floor surfaces.

- *Do you walk over or around wires or cords such as lamp, telephone or extension cords?*

Coil or tape cords and wires next to the wall. You may need an electrician to put in another outlet.

Stairs and steps – both inside and outside

- *Are the stairs and steps safe?*

Check and repair any stairs and steps that are not too high or narrow, uneven, loose or broken. If you have patterned or hard to see steps or stairs think about putting non-slip contrast tape or paint the edges.

- *Is the carpet or floor covering on the steps loose or torn?*

Make sure the carpet or floor covering is firmly attached to every step or remove the carpet/floor covering and attach non-slip rubber treads to the stairs.

- *Are the handrails loose or broken?*

Repair loose handrails or install new ones. Request an occupational therapy home assessment to ascertain if handrails are needed on both sides of the stairs.

Home safety checklist

- *Is a ramp needed?*

Request an occupational therapy home assessment to ascertain if a ramp is needed. If one is already in place make sure it is sturdy, safe and well maintained.

- *Is there sufficient lighting?*

Stairwells should be fitted with globes of at least 75 watts. Replace blown bulbs immediately. Install additional lighting if required.

- *Is there a light switch at both ends of the stairs?*

If not, install switches at the top and bottom or sensor lighting.

- *Is there clutter on or around the stairs?*

Make sure the stairs and stairwell are free from objects and clutter at all times.

Kitchen and eating area

- *Are the cupboards too high, low or deep?*

Install adjustable shelving that swings up, down or rolls out. Move things you use often to the most easily accessible shelving.

- *Are pathways obstructed?*

Make sure pathways are free from objects and clutter at all times.

- *Is the lighting adequate?*

If not increase wattage of bulbs or ask an electrician to install more lighting.

- *Is the floor slippery?*

Clean up spills straight away. Use slip resistant treatment on the floor or change flooring to one with a less slippery surface.



Bathrooms

- *Is the bath tub or shower floor slippery?*

Put a non-slip rubber mat or self-stick strips on the floor of the tub or shower.

- *Is there a step into the shower?*

Remove the threshold from the shower to make it a step-free, walk-in shower.

- *Are there sufficient grab rails?*

Install grab rails near the bath tub, shower and toilet.

- *Is there an adjustable shower head?*

An adjustable shower head can be used sitting or standing and makes cleaning the shower easier.

- *Shower seat*

Purchase a shower seat if required.

Home safety checklist



Bedrooms

- *Is there too much furniture/furnishings/clutter and not enough space to move around?*

Remove excess furniture/furnishings/clutter for easier access.

- *Is the light near the bed hard to reach?*

Place a lamp on the bedside table where it's easy to reach.

- *Is the path from the bed to the bathroom dark?*

Put in a night-light so people can see where they're walking. Some night-lights go on by themselves after dark.

- *Is there adequate lighting?*

Bedrooms should be fitted with globes of at least 100 watts. Replace blown bulbs immediately. Install additional lighting if required.

- *Is the bed too high or too low?*

The bed is too low if a person's knees are above the hips when sitting on the bed. Bed raisers under bed legs can raise the height and make it easier to get in and out of.

The bed is too high when legs do not touch the floor when sitting on the edge of the bed. Remove the bed frame or use a lower profile mattress or box springs.

- *Is there a telephone in the bedroom?*

Invest in a cordless phone or keep a mobile phone on the bedside table or use an emergency alert system.

Living

- *Is there too much furniture/furnishings/clutter and not enough space to move around?*

Remove excess furniture/furnishings/clutter for easier access.

- *Is the furniture steady, comfortable and easy to get in and out of?*

Check and replace or repair furniture to make sure it is stable, practical and safe, especially wobbly arms or legs of chairs. If the seat is too low add a cushion or pillow on the seat to raise the height.

- *Is there adequate lighting?*

Increase wattage for lamps and lights. Replace blown bulbs immediately. Install additional lighting if required.

Hallway

- *Is there a working smoke alarm?*

Install new smoke detector batteries once a year.

- *Is there adequate lighting?*

Increase wattage for lamps and lights. Replace blown bulbs immediately. Install additional lighting if required.

Outdoors

- *Are the footpaths and entrances safe?*

Remove damaged pavers, slip hazards and pot plants and trim overgrown plants from walkways, including around the clothes line.

- *Is there adequate lighting?*

Install sensor lights at the major entry points.

Home safety checklist



Other

- *Are drawers and cupboards over-filled?*

It might be a good time to:

- clean out drawers and cupboards of things no longer worn, used or needed
- store regularly used items in easily accessible places
- if necessary, invest in more practical storage solutions.

- *Are you replacing any furniture?*

If you decide to replace furniture think about:

- how easy it is to move, for example dining chairs need to be easily moved to sit in
- how sturdy it is, for example it needs to be able to withstand the weight of the person being cared for
- purchasing items with no sharp edges such as coffee tables, tables etc.

- *Are there any low hanging lights?*

Low hanging lights can be a problem for tall people. It might be a good idea to shorten the cord of any low hanging lights.

- *Are the electrical fittings and power boards safe?*

Repair or replace any damaged or faulty power points, power boards and extension leads. Do not overload power boards.

What actions do I need to take

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Other safety issues checklist

There are a number of other things you might want to think about for the safety of the person you care for, yourself and alternate carers.

This resource has been developed to give you a starting point.

Equipment for the person being cared for such as lifting equipment and wheelchairs

Make sure all:

- equipment is fit for purpose, for example does it meet the needs of the person being cared for and the carer
- equipment is in good working order and well maintained
- carers know how to use, maintain and store the equipment.

Biological hazards, including human blood and body substances

Biological hazards can expose the person being care for and carers to infection risks. The risk can be minimised by:

- following good personal hygiene practices, particularly hand hygiene
- if appropriate, using personal protective equipment such as gloves, plastic aprons and closed shoes
- maintaining a clean environment and appropriately managing spills of blood and body substances
- safe handling and disposal of sharps and using retractable needles where appropriate
- hygienically handling and laundering soiled bedding, towels, clothing etc



- handling and disposing of all waste appropriately, including clinical waste
- correctly processing reusable equipment and instruments
- providing training to all alternate carers
- requiring alternate carers to be appropriately immunised (see vaccinations below)
- providing adequate supplies of personal protective equipment, for example gloves in a range of sizes.

Other safety issues checklist

Vaccinations

The Australian Immunisation Handbook recommends that carers have the following vaccinations:

- diphtheria-tetanus
- measles-mumps-rubella
- hepatitis A
- hepatitis B
- flu.

Check with your GP about which vaccinations you, the person you care for and alternate carers require and make sure everyone is fully immunised.

Electrical equipment

Make sure electrical equipment (for example vacuum cleaner, kettle, microwave, washing machine and dryer) are:

- in good working order
- well-maintained
- used and stored appropriately.

Footwear

It is important to wear good footwear when caring for someone. Make sure your and alternate carers footwear is:

- suitable for the type of work and work environment, for example a strong, sturdy closed shoe rather than thongs or sandals
- comfortable with an appropriate non-slip sole and tread pattern
- checked regularly to make sure treads are not worn away or clogged
- designed to provide adequate support and stability.



Hazardous substances and chemicals

There are a number of cleaning and laundry chemicals which can be harmful, especially products containing bleach (sodium hypochlorite) or caustic soda (sodium hydroxide). Disinfectants and cleaning solutions are a common cause of chemical injuries in the home.

When using hazardous substances and chemicals reduce the risk of inhalation, ingestion or skin contact by making sure anyone using the products:

- reads, understands and adheres to the product safety information on the container
- uses the lowest concentration of the hazardous ingredients which will still do the job
- wears appropriate protective clothing such as rubber gloves and masks
- makes sure that confined spaces are well ventilated when using some types of chemicals
- uses the products only for their intended purpose
- understands the consequences of exposure, first aid and any emergency response actions
- stores the products safely.

Other safety issues checklist



Vehicles

If you or alternate carers transport the person being cared for, minimise the risk by making sure:

- the vehicle is safe and fit for purpose
- the vehicle is well maintained, especially tyres, brakes and lights
- there is nothing unrestrained in the vehicle
- drivers know how to safely operate the vehicle
- drivers are competent and fit to drive, for example they are licensed and they advise you of any driving offences which may affect their ability to drive
- drivers are trained in how to transport the person being cared for, for example have access to mechanical aids, if required, and/or have appropriate help at the start and end of the journey.

Pets

Pets make great companions and there is a growing trend in using assistive dogs. Dogs, especially large breeds, can be a falls hazard for the frail elderly, people with vision impairment and people with poor mobility. To minimise the risk of harm:

- do not put water and food bowls and litter trays in walkways
- immediately clean up any slippages (potential slip hazards)
- appropriately dispose of biological waste.

Challenging behaviour

Some people being cared for have challenging behaviour, for example:

- biting, spitting, scratching, hitting, kicking
- throwing things
- pushing, shoving, tripping, grabbing and more serious assault
- verbal threats.

Minimise the risk of harm by:

- developing and implementing preventative, de-escalation and avoidance strategies and the steps to be taken if an incident occurs
- making sure all carers are aware of the challenging behaviour, its triggers, the frequency and what to do if an incident occurs
- making sure relevant information about the person being cared for is communicated, especially during handovers.

Care plan

Many people being care for have a care plan that identifies their specific needs. It is important that the plan is:

- regularly reviewed and updated
- provided to carers and that they understand and follow it.

Other safety issues checklist



Procedures manual

If you are a carer or person being cared for who self-manages their funding you could have duty of care obligations as an employer. As an employer you have a legal obligation to provide a safe working environment.

If you are an employer developing a procedures manual could be helpful to make sure everyone has a clear understanding of the situation, their roles and responsibilities and how things should be done.

The manual could include:

- the person being cared for's care plan
- instructions on how to use equipment and chemicals
- the correct handling of biological hazards
- safety information for both the employee and the person being cared for
- other relevant information.

What actions do I need to take

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