

Older people, hospital discharge and duty of care

01| Duty of care, negligence and the role of the clinician and hospital

Information for health professionals

KEY MESSAGE

A hospital owes a duty of care to every patient it admits. This means the hospital must take reasonable care to keep all patients safe while they are receiving care.

Under the Clinical Care Standards of the Australian Commission on Safe and Quality Health Care Standards, clinical care is defined as the ‘diagnosis, treatment and prevention of illness and disease’.

This duty is described as *non-delegable*. This means the hospital cannot avoid responsibility simply by saying that a doctor, nurse or other health professional was looking after the patient. The duty is important because patients are often dependent on the hospital for care, information and safety.

Courts have recognised that hospitals take on a higher standard of care for patients who are in ‘special need or vulnerability’ of care (a child or person with a disability).

Being older does not mean the patient automatically fits this ‘special vulnerability or need’ criteria. Many older people are fit and independent and the hospital’s responsibility is not unlimited.

It depends on the services the hospital has agreed to provide. However, where a person goes to a hospital for treatment and the hospital accepts them as a patient, the hospital must make reasonable care, skill, equipment and systems available for that patient.

WHEN IS A HOSPITAL NEGLIGENT UNDER QUEENSLAND LAW?

Under the *Civil Liability Act 2003* (Qld), a patient must show more than harm to allege negligence.

The law asks whether the hospital or hospital employee should have taken reasonable precautions against the risk.

To prove negligence, the patient usually needs to show that:

- (a) the risk was foreseeable, meaning a reasonable person could have predicted it
- (b) the risk was not insignificant, meaning it was real enough to require attention
- (c) a reasonable person in the same position would have taken precautions to reduce or avoid the risk.

When a court decides what was reasonable, it considers how likely the harm was, how serious the harm could be, how difficult it would have been to take precautions, and the social value of the activity that created the risk.

The Act also gives health professionals a defence in some cases.

- A clinician may avoid a finding of negligence if they acted in a way that a significant number of respected health professionals would accept as competent professional practice.



- The clinician cannot rely on this defence if that professional opinion is irrational or contrary to written law.
- The defence also does not apply if the clinician failed to give warnings, advice or information about risks, including risks connected with discharge against medical advice.

HOSPITALS MUST BE REASONABLE NOT PERFECT

- A hospital does not have to prevent every possible harm.
- The law requires hospitals to take reasonable care to avoid foreseeable harm. It does not require hospitals to guarantee that no harm will happen.
- This is especially important in discharge decisions. A hospital must take reasonable care when deciding whether and how a patient should leave hospital.

However, the law does not require a hospital to keep every patient indefinitely just to remove every possible risk.

Practical example for discharge: If a hospital discharges a patient quickly because of bed pressure, the legal question is not simply whether harm later occurred.

The question is whether the hospital and clinicians took reasonable care at the time, including whether they considered the patient's individual risks, gave appropriate warnings and arranged reasonable follow-up.

HOSPITAL RESPONSIBILITY COMPARED WITH CLINICIAN RESPONSIBILITY

Hospitals and individual clinicians can both owe duties to the same patient, but they do different things.

- A hospital may be responsible when its systems, policies, staffing, bed management pressures or resource decisions contribute to unsafe care. This can still be true even when a competent clinician makes the immediate treatment or discharge decision.
- Individual clinicians also owe professional duties to patients. They must use reasonable skill and judgment, and they must give patients the information a reasonable person in the patient's position would need to make an informed decision.

Issue	Hospital duty	Clinician duty
Main responsibility	The hospital must provide safe systems, policies, facilities, staffing and processes for patient care.	The clinician must use reasonable professional skill and judgment when assessing, treating and advising the patient.
Can the duty be passed on?	No. The hospital cannot avoid responsibility simply by relying on a qualified doctor, nurse or other practitioner.	A clinician remains responsible for their own professional decisions and communication with the patient.
Discharge decisions	The hospital may be responsible if its policies, bed pressures or systems lead to an unsafe or unreasonable discharge process.	The clinician must consider the patient's individual circumstances and make a reasonable clinical decision about discharge.



Issue	Hospital duty	Clinician duty
Warnings and information	The hospital should have systems that support clear communication about risks, options and follow-up care.	The clinician must explain important risks and information the patient needs to make an informed decision.
When liability may arise	Liability may arise where organisational systems, policies or resource decisions fall below reasonable standards.	Liability may arise where the clinician's assessment, treatment, advice or warning falls below reasonable professional standards.
Plain-English example	A hospital may be responsible if a discharge policy discharges patients out quickly without proper individual risk assessment.	A clinician may be responsible if they fail to explain a serious discharge risk that the patient needed to know.

WHAT THIS MEANS IN PRACTICE

In practice, one discharge decision can raise questions about both hospital responsibility and clinician responsibility. For example, a clinician may make the discharge decision, but the hospital may still be responsible if its systems or policies increase the risk of an unsafe discharge.

A clinician who follows hospital policy in good faith may avoid personal liability. However, the hospital may still breach its duty if the policy or system creates unreasonable outcomes for individual patients. The key question is whether the hospital and clinicians took reasonable care in the circumstances.

LEGAL SOURCES RELIED ON

This document relies on Queensland negligence law and Australian case law about the duties hospitals and health professionals owe to patients.

Civil Liability Act 2003 (Qld): This Act sets out the general rules for negligence in Queensland. It explains when a person has breached a duty of care, including whether the risk was foreseeable, whether it was not insignificant, and whether a reasonable person would have taken precautions. It also deals with causation, professional duties, warnings and the peer professional opinion defence.

Kondis v State Transport Authority (1984) 154 CLR 672: This High Court case explains the idea of a non-delegable duty of care. In plain English, it supports the principle that a person or organisation with this kind of duty cannot avoid responsibility simply by passing the work to someone else.

Ellis v Wallsend District Hospital (1989) 17 NSWLR 553: This case is commonly relied on for the duties hospitals owe to patients. It discusses hospital responsibility, including the question of whether a hospital can be responsible for doctors or other medical practitioners involved in a patient's care.

Cases about warnings and informed consent: The document also reflects the broader legal principle that clinicians must give patients important information about material risks so the patient can make an informed decision. In Queensland, this principle operates alongside the warning and professional practice provisions in the Civil Liability Act 2003 (Qld).

ACSQHC comprehensive care standard 5, Outcome 5.4: Older people receive comprehensive safe and quality clinical care that is evidence-based, person-centred and delivered by qualified health professionals.



PLAIN-ENGLISH EXAMPLES FROM THE KEY CASES

Kondis v State Transport Authority: A worker was injured when equipment operated by someone engaged through an independent contractor caused harm. The key point is that an organisation with a special duty of care may still be responsible for safety even when another person carries out the work. For hospitals, the example helps explain why a hospital cannot simply say, “that was the contractor’s job” if the hospital still owed the patient a non-delegable duty.

Ellis v Wallsend District Hospital: A patient was treated in a hospital by a medical practitioner whose relationship with the hospital was legally important. The case shows that courts look closely at what services the hospital agreed to provide and whether the patient reasonably looked to the hospital for care. For hospitals, the example helps explain why responsibility depends on the relationship between the patient, the hospital and the treating practitioner.

Rogers v Whitaker. A patient agreed to eye surgery but was not warned about a rare risk that was especially serious for her because it could affect her only good eye. The High Court said doctors must warn patients about material risks. A risk can be material even if it is rare, if a reasonable person in the patient’s position would want to know about it or if the doctor knew the particular patient would likely consider it important.

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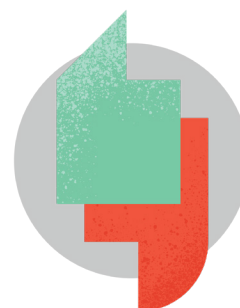
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