

---

## **Information special medical treatment guidelines**

---

The Guardianship Tribunal has powers under the *Guardianship Act 1987*. The Tribunal can appoint guardians and financial managers for people 16 years and over who are unable to make decisions for themselves. The Tribunal can also consent to certain medical and dental procedures for people who are incapable of consenting themselves.

Only the Tribunal can consent to special medical treatments when the person cannot give a valid consent to their own treatment. When hearing applications for consent to medical treatment, each Tribunal always consists of three members — a legal member, a professional member, such as a doctor or other professional person, and a community member.

### **There are two groups of special medical treatments. Different tests for consent apply to each group.**

#### **The first group consists of:**

- sterilisation
- termination of pregnancy procedures
- prolonged use of addictive drugs unless they are being used to treat cancer or for palliative care of terminally ill patients
- treatments that use aversive stimulus.

Before the Tribunal can consent to these treatments, it must be satisfied that:

- the proposed treatment is the most appropriate treatment to promote and maintain the person's life or prevent serious damage to their health.

When considering an application for consent to special medical treatment in this group, the Tribunal will need evidence that addresses each element of the test.

**The second group of special medical treatments consists of** new treatments that have not yet gained the support of a substantial number of practitioners who specialise in the area concerned and treatments declared in the regulations to be special medical treatments. Two treatments have been so declared. They are psychotropic medications when dosage levels, combinations or numbers of drugs or duration of treatment are outside accepted use given the person's condition and prescription of androgen reducing medication to control behaviour.

Before the Tribunal can consent to these treatments it must be satisfied that:

- the treatment is the only or most appropriate way of treating the person and is manifestly in the best interests of the patient, and
- if the National Health and Medical Research Council has prescribed guidelines relevant to carrying out the treatment, those guidelines have been or will be complied with.

When considering an application for consent to special medical treatment in this group, the Tribunal will need evidence that addresses each element of the test.

#### **Guardianship Tribunal hearings**

When an application is made for consent to special medical treatment, a Tribunal staff member will discuss preparing for a hearing with those involved.

Evidence and views about the application will be heard at the hearing. A decision will be made at the hearing as to whether consent will be given.

---

The person who is thought to need the special medical treatment, their close relatives or friends, and other people providing care to the person should attend the hearing whenever possible and appropriate. The Tribunal will want to speak with the doctor/s who have seen the person and other relevant people in person or by telephone during the hearing.

People involved, particularly the person's close friends, family and other carers, may want to express their views in writing before the hearing if they are unable to attend.

The Tribunal will try, if possible, to hear cases concerning people who live in country areas in regional centres near them.

The person's ability to understand the general nature and effect of the treatment is of particular importance. To deal with this issue, the Tribunal will need information about:

- the nature and extent of the person's disability assessments or reports about the person's disability and how this affects their understanding of the treatment
- whether anyone has spoken directly to the person to explain the treatment
- the person's understanding of what the treatment involves and its effects.

If there is no one who can explain the treatment to the person, a Tribunal staff member will try to provide information of people with experience who could discuss the treatment with the person. In some cases, counselling or education will assist the person to understand the treatment.

If the Tribunal determines that the person is able to consent to the treatment, the decision about the treatment will be their own. In this case, the Tribunal will not need to consider the issues of appropriateness or need for the treatment.

### **Views of the person about the treatment**

The *Guardianship Act* 1987 requires that the Tribunal take into account any views of the person who is said to need the special medical

treatment. When the person is able to indicate or express views they should attend the hearing whenever possible so that the Tribunal can hear their views directly. Attempts should have been made to explain the proposed treatment and alternatives before the hearing. Information about the person's views about the treatment should be provided to the Tribunal.

When considering the views of the person, the Tribunal will address the following questions:

- Has any counselling been provided to the person about the proposed treatment?
- What are the person's views about the proposed treatment?
- Has the person indicated, in any way, that they want the proposed treatment?

If the person is unable to attend the hearing, the Tribunal will require a written report that addresses these questions. If someone with expertise in the area has counselled the person about the treatment and hearing, a written report from that person about the person's capacity to understand the general nature and effect of the proposed treatment would assist the Tribunal.

### **Views of others**

The Tribunal will also consider the views of other people closely involved with the person. These will usually include the person's family and those providing residential care or other services to the person.

---

### **For more information contact**

#### ***Guardianship Tribunal***

Telephone (02) 9556 7600

Toll free 1800 463 928

Facsimile (02) 9555 9049

Telephone typewriter

(02) 9556 7634

Email [gt@gt.nsw.gov.au](mailto:gt@gt.nsw.gov.au)

Website [www.gt.nsw.gov.au](http://www.gt.nsw.gov.au)

Level 3, 2a Rowntree Street, Balmain NSW 2041

Postal address Locked Bag 9, Balmain NSW 2041