

## Information for Applicants

### Application for consent to medical or dental treatment

#### When is it necessary to seek substitute medical & dental consent?

Most patients are capable of understanding the information that doctors and dentists give them and are usually able to make a decision about a proposed treatment.

If a medical or dental practitioner believes that a patient is incapable of understanding the general nature and effect of the treatment when it is explained to them and therefore is not capable of giving a valid consent, then they must normally seek substitute consent.

There is **no need** to get substitute consent for:

- *urgent* treatment that is considered necessary to save the patient's life, to prevent serious damage to the patient's health or to alleviate significant pain or distress
- *minor* treatment when the patient is not objecting, consent from a *person responsible* is unobtainable and the treatment is necessary to promote the patient's health and wellbeing.

#### Who identifies the need for substitute consent?

The medical practitioner must:

- determine if substitute consent is needed
- identify who must give the consent, and
- obtain the consent.

#### Who has the legal authority to give substitute consent?

Under the *Guardianship Act 1987*, depending on the category of treatment, the substitute decision-maker is either:

- the *person responsible* (see below)

- a guardian appointed with a medical and dental consent function, or
- the Guardianship Tribunal.

In most cases where substitute consent is required, there will be a *person responsible*. In any case the Tribunal has the authority to consent to medical and dental treatments for people 16 years and over who are incapable of consenting to their own treatment.

(refer to *Who can give substitute consent for medical or dental treatment*)

#### Who is the person responsible?

A *person responsible* is **not** necessarily the patient's next of kin.

There is a hierarchy of people who can be the *person responsible*. They are:

- 1 A guardian (including an enduring guardian) who has the function of consenting to medical and dental treatments.
- 2 *If no-one as specified in item 1*, a spouse or de facto spouse or partner where there is a close, continuing relationship.
- 3 *If no-one as specified in item 1 and 2*, a carer who provides or arranges for domestic support on a regular basis and is unpaid. (If the person is in residential care, then the carer before the person went into residential care.)
- 4 *If no-one as specified in item 1, 2 and 3*, a close personal friend or close relative where there is both a close personal relationship, frequent personal contact and a personal interest in the patient's welfare, on an unpaid basis.

The person next in the hierarchy may become the *person responsible* if:

- a *person responsible* declines in writing to exercise the function, or
- a medical practitioner or other qualified person certifies in writing that the *person responsible* is not capable of carrying out their functions.

#### When is an application to the Tribunal necessary?

An application to the Tribunal is necessary if the treatment:

- is *special* medical treatment
- is *major* medical or dental treatment, and there is no *person responsible* or the *person responsible* is not available, or
- is *major* or *minor* medical treatment when the patient is objecting and there is no appointed guardian authorised to override such objection.

#### How do you apply to the Tribunal for consent?

You need to complete and lodge the *Application for consent to medical or dental treatment* form with the Tribunal.

#### What happens next?

We will assess the application.

The Tribunal conducts a hearing, often by phone. This will be an opportunity for the Tribunal to hear the views of the people involved, including the person making the application and relevant medical or dentistry professionals.

At the conclusion of the hearing, the Tribunal will decide whether consent should be granted or refused, and will notify you in writing.

## Who can give substitute consent for medical or dental treatment

Urgent treatment	No consent needed
<p>Treatment considered urgent and necessary to:</p> <ul style="list-style-type: none"> <li>• save patient's life</li> <li>• prevent serious damage to health</li> <li>• prevent or alleviate significant pain or distress</li> </ul>	<p><b>Person responsible</b> can consent.</p> <p>If there is no person responsible or the person responsible is not available then only the <b>Guardianship Tribunal</b> can consent.</p> <p>The request and consent must be in writing or, if not practicable, later confirmed in writing.</p>
<p><b>Major treatment</b></p> <ul style="list-style-type: none"> <li>• Any medical or dental treatment involving general anaesthetic or other sedation (except as listed in Minor below)</li> <li>• Medications affecting the central nervous system (except as listed in Minor below)</li> <li>• Drugs of addiction (except in circumstances when used as listed in Special below)</li> <li>• Long-acting injectable hormonal substances for contraception or menstrual regulation</li> <li>• Any treatment for the purpose of eliminating menstruation</li> <li>• Testing for HIV</li> <li>• Any treatment involving substantial risk</li> <li>• Any dental treatment resulting in removal of all teeth or significantly impairing ability to chew food</li> </ul>	<p><b>Person responsible</b> can consent.</p> <p>If the patient is not objecting and there is no person responsible or the person responsible is not available the <b>doctor or dentist</b> may treat without consent.</p> <p>It must be noted on the patient's record that the treatment is necessary to promote the patient's health and wellbeing, and that the patient is not objecting.</p>
<p><b>Minor treatment</b></p> <ul style="list-style-type: none"> <li>• All medical and dental treatments (except those listed in Major or Special)</li> <li>• Treatment involving general anaesthetic or other sedation <ul style="list-style-type: none"> <li>– for management of fractured or dislocated limbs</li> <li>– for endoscopes inserted through an orifice, not penetrating the skin</li> </ul> </li> <li>• Medications that affect the central nervous system which are used: <ul style="list-style-type: none"> <li>– for analgesic, antipyretic, antiparkinsonian, antihistaminic, antiemetic, antinauseant or anticonvulsant purposes</li> <li>– as PRN treatment not more than 3 times per month</li> <li>– as sedation in minor procedures</li> </ul> </li> </ul>	<p><b>Person responsible</b> can consent.</p> <p>If the patient is not objecting and there is no person responsible or the person responsible is not available the <b>doctor or dentist</b> may treat without consent.</p> <p>It must be noted on the patient's record that the treatment is necessary to promote the patient's health and wellbeing, and that the patient is not objecting.</p>
<p><b>Special treatment</b></p> <ul style="list-style-type: none"> <li>• Vasectomy and tubal occlusion</li> <li>• Treatments intended or likely to result in infertility</li> <li>• Termination of pregnancy</li> <li>• Drugs of addiction used for more than 10 days in 30, except when used to treat cancer or in the palliative care of terminally ill patients</li> <li>• Aversives – mechanical, chemical or physical</li> <li>• Any new treatment that has not yet gained the support of a substantial number of doctors or dentists specialising in area</li> <li>• Use of medication affecting the central nervous system where dosage, duration or combination is outside accepted norms</li> <li>• Androgen-reducing medications for behavioural control</li> </ul>	<p>Only the <b>Guardianship Tribunal</b> can consent.</p>
<p><b>Major or minor treatment when there are objections</b></p> <p>If the patient or the <i>person responsible</i> indicates, or has previously indicated, that he or she does not want the treatment carried out.</p>	<p>Only the <b>Guardianship Tribunal</b> can consent.</p>

**Application for  
consent to medical or dental treatment**

Refer to the *Information for Applicants* to help you decide if consent is required and who can consent.

If you need more information, phone the Tribunal enquiry service on 1800 463 928 (toll free) or 9555 8500.

Please write clearly in black pen.

**Applicant name**

**relationship to  
the person this  
application is about**

**1 The person**

**Who is this application about?**

title  Mr  Mrs  Miss  Ms  Other, specify

name

other names by which  
this person is known

date of birth

gender  male  female

**What is the person's current location?**

Which of the following best describes this location?  own home, provide details below  
 home of family member or friend, provide details below  
 care facility, provide details below

name of family member,  
friend or care facility

street

suburb/town, state, postcode

name of contact  
(if applicable)

daytime phone

after hours

mobile phone

fax

email



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Will the treatment involve a general anaesthetic or other sedation?  No  Yes, provide details.

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Does the treatment involve any significant risks or side effects?  No  Yes, provide details.

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If extraction of teeth is proposed, will it significantly impair the person's ability to chew for an indefinite or prolonged period of time?  No  Yes, provide details.

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How will the proposed treatment benefit the person?

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Are there alternative treatments for the person's condition?  No  Yes, indicate why the proposed treatment is preferred

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What are the likely consequences if the proposed treatment is not carried out?

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Is the person receiving any other treatment or medication?  No  Yes, provide details. Include dosage, if applicable

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Are you aware of anyone who disputes that the treatment is required?  No  Yes, provide details

the person themselves

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health professional, provide name

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other person(s), provide name

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### 3 The need for substitute consent

Refer to *Information for Applicants: Who can give substitute consent for medical or dental treatment* to find out when you need substitute consent and who can give the consent.

*Please provide additional comments where appropriate.*

Has the proposed treatment been discussed with the person?  No  Yes

Is the person incapable of understanding the nature and effect of the treatment?  No  Yes, give reasons

Is the person incapable of indicating their consent?  No  Yes, give reasons

Has the person expressed any views about the proposed treatment in the past?  No  Yes, provide details

For what reason(s) is the Guardianship Tribunal being asked to give consent?

- The treatment is *special* medical treatment
- The treatment is *major* and there is no *guardian* or *person responsible* for the person
- The treatment is *major* and the *person responsible* cannot be located or is unwilling to give consent
- The person objects to the treatment
- There is a dispute about the treatment
- Other, provide details

Have you told the person that you are making this application?  No  Yes



## 4 Other people involved

### Who is the doctor or dentist providing the treatment?

title	
name	
qualifications or specialty	
practice address- street	
suburb/town, state, postcode	
daytime phone	after hours
mobile phone	
fax	pager
email	
Does this person regularly treat the person? <input type="checkbox"/> Yes <input type="checkbox"/> No	

### Who is the person's usual doctor? (if not the same as above)

<input type="checkbox"/> Don't know <input type="checkbox"/> To my knowledge, there is none	
title	
name	
qualifications or specialty	
practice address - street	
suburb/town, state, postcode	
daytime phone	after hours
mobile phone	
fax	pager
email	

### Who is the *person responsible*?

Refer to *Information for Applicants: Who is the person responsible.*

<input type="checkbox"/> Don't know <input type="checkbox"/> To my knowledge, there is none	
title <input type="checkbox"/> Mr <input type="checkbox"/> Miss <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other, specify	
name	
street	
suburb/town, state, postcode	
daytime phone	after hours
mobile phone	
fax	
email	

## 5 Supporting material

Providing professional opinions and other relevant documents will help the Tribunal make a decision.

### What supporting documents are attached?

Please list below any documents (e.g. medical opinions, test results, referral letters, assessments, x-rays, specialist reports) that you have attached.

title of document

author & organisation

relationship to the person

document date

title of document

author & organisation

relationship to the person

document date

title of document

author & organisation

relationship to the person

document date

## 6 The hearing

Does the person know about the application?  No  Yes

Is the person able to express views to the Tribunal?

Can we contact the person during the hearing?  No  Yes

contact phone number

### Who can the Tribunal contact during the hearing?

	best number to contact	best time to contact
the treating doctor		
the person's usual doctor		
the applicant		
other, provide details		
name		
relationship		

## 7 The applicant's declaration

### Who is making this application for consent?

<input type="checkbox"/> the treating doctor	
<input type="checkbox"/> the person's regular doctor	
<input type="checkbox"/> other person, provide details below	
title	<input type="checkbox"/> Dr <input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other, specify
name	
relationship to the person	
qualifications or specialty	
street	
suburb/town, state, postcode	
daytime phone	after hours
mobile phone	
fax	pager
email	

### Declaration

Having read through this completed application:

- I consider that, to the best of my knowledge, all of the information is true and accurate.
- I have not intentionally left out important information.
- I understand that it is an offence to make a false or misleading statement in an application. (Penalty up to \$500.)

Signature of applicant

Date

**To lodge your application, return all 7 pages of the form.  
Please do not include the Information for Applicants.**

***Guardianship  
Tribunal***

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