



Fact sheet

‘Person Responsible’

Consent to medical or dental treatment

Medical and dental practitioners have a legal and professional responsibility to get consent to treatments before treating a patient.

The patient usually gives consent. If the patient is not capable of consenting to their own treatment, the practitioner should seek consent from the patient’s ‘person responsible’. This is required by the *Guardianship Act 1987*.

Who is the ‘person responsible’?

A ‘person responsible’ is not necessarily the patient’s next of kin. A ‘person responsible’ is either:

- a guardian (including an enduring guardian) who has the function of consenting to medical, or dental treatment

or, if there is no guardian:

- the most recent spouse or de facto spouse with whom the person has a close, continuing relationship. ‘de facto spouse’ includes same sex partners

or, if there is no spouse or de facto spouse:

- an unpaid carer who is now providing support to the person or provided this support before the person entered residential care

or, if there is no carer:

- a relative or friend who has a close personal relationship with the person.

If a person identified as being a ‘person responsible’ declines in writing to exercise the function of ‘person responsible’ or a medical practitioner or other qualified person certifies in writing that the person identified as ‘person responsible’ is not capable of carrying out those functions, then the person next in the hierarchy is the ‘person responsible.’

If the treatment is special treatment, the practitioner must seek consent from the NSW Civil and Administrative Tribunal before treating the patient.

If there is no ‘person responsible’ and the treatment is major treatment, the practitioner must seek consent from the Tribunal before treating the patient.

If the practitioner considers the treatment to be urgent and necessary, they may treat without consent.

For more information about urgent, special, major and minor treatment, see the guide overleaf.

Rights and responsibilities of a ‘person responsible’

If you are the ‘person responsible’ for someone who cannot consent for themselves you have a right and a responsibility to know and understand: what the proposed treatment is what the risks and alternatives are you can say “yes” or “no” to the proposed treatment you can seek a second opinion.

The practitioner has a responsibility to give you this information and seek your consent to the treatment before treating the patient.

Is there anything a ‘person responsible’ cannot do?

When someone is incapable of consenting to their own treatment, a person responsible cannot:

- consent to special medical treatment, such as sterilisation operations, terminations of pregnancy and experimental treatments
- consent to a treatment if the patient objects to the treatment.

Guardianship Division

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Who can give substitute consent for medical or dental treatment?

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