

# 11. Consent tables – quick finders

## 11.1. Adults with capacity and Mature Minors

Type of treatment for consent	Who can consent	Documentation Required	Relevant Section
Significant procedure or treatment	Patient	Written consent required Form: Consent for Medical Procedure/Treatment	Section 4.5 – Significant procedures or treatments requiring written consent
Minor procedure, examination or treatment	Patient	Written consent not required although strongly advisable for a written note to be included in patient's Health Record	Section 4.6 – Minor procedures or treatments
Research and clinical trials	Patient	HREC approved consent form	Section 10.6 – Research (including clinical trials)
Refusal of treatment	Patient (provided no mental health orders).	Written consent required Form: <i>Procedure / Treatment Refusal Acknowledgement (Patient with Capacity)</i>	Section 6 – Refusal of treatment Section 10.2.1 – Antenatal testing and Screening
Refusal of treatment Advance Care Directive	Patient who had Capacity at the time of making the Advance Care Directive	Written Advance Care Directive required	Section 6.2 – Refusal of treatment using an Advance Care Directive
Discharge against medical advice	Patient	Preferable to get confirmation in writing from patient Form: <i>Discharge against Medical Advice (Adult with Capacity)</i>	Section 6.3 – Discharge against medical advice

## 11.2. Adults without capacity

Type of treatment for consent	Who can consent	Documentation Required	Relevant Section
Emergency treatment (not previously refused for example by a valid ACD)	No consent required	Documented in the patient's Health Record	Section 4.2.1 – Emergency treatment
Major Treatment under the <i>Guardianship Act 1987</i>	Person Responsible, provided Health Practitioner is not aware of any patient objections If there is no Person Responsible or the Person Responsible is not available or unwilling, then only the NSW Civil and Administrative Tribunal can consent	Written consent required. Form: <i>Consent – Substitute Consent for Medical Procedure/Treatment</i>	Section 7.7 – Types of treatment under the <i>Guardianship Act</i> and consent requirements
Minor Treatment under the <i>Guardianship Act 1987</i>	Person Responsible can consent The Health Practitioner may treat without consent if the patient is not objecting and there is no Person Responsible or the Person Responsible is not available	Written consent preferable or at least documented in the patient's Health Record	Section 7.7 – Types of treatment under the <i>Guardianship Act</i> and consent requirements
Special Treatment under the <i>Guardianship Act 1987</i>	Only the NSW Civil and Administrative Tribunal, Guardianship Division can consent		Section 7.7 – Types of treatment under the <i>Guardianship Act</i> and consent requirements
Major or Minor Treatment when the patient is objecting	Only the NSW Civil and Administrative Tribunal, Guardianship Division can consent unless: <ul style="list-style-type: none"> <li>• NCAT has made a guardianship order, appointing a guardian with medical and dental consent authority and additional authority to override the patient's objections, and the guardian has provided consent; or</li> <li>• section 46(4) guardianship Act, the patient has minimal or no understanding of what the treatment entails and the treatment will cause the patient no distress or if it will cause the patient some distress, the distress is likely to be reasonably tolerable and only transitory</li> </ul>		Section 7.6 – When is a consent application to the Guardianship Division of the Civil and Administrative Tribunal required?
Medically supervised withdrawal, rehabilitation and other interventions under the <i>Drug and Alcohol Treatment Act 2007</i> for patients with severe substance dependence who lack capacity to consent primarily as a result of substance abuse	An Accredited Medical Practitioner (AMP) who has been authorised by the Secretary, NSW Health	Dependency certificate in the form shown in Schedule 2 of the <i>Drug and Alcohol Treatment Act 2007</i>	Section 4.2.2 – Treatment lawfully authorised or required

**Note that in all cases consent from NCAT or otherwise should be recorded in the patient's Health Record.**

## 11.3. Minors

Type of treatment for consent	Who can consent	Documentation Required	Relevant Section
Minor procedure, examination or treatment	Parent/guardian unless the minor is a Mature Minor in which case the Minor can consent	Written consent not required although strongly advisable for a written note to be included in patient's Health Record	Section 4.6 – Minor procedures or treatments
Significant procedure or treatment	Parent/guardian except in rare cases where the Minor is a Mature Minor in which case the Minor can consent, however, the consent of the parent/guardian is still recommended	Written consent required Form: <i>Consent to Medical Treatment (Minor)</i> or <i>Consent to Medical Treatment (Adult or Mature Minor)</i>	Section 4.5 – Significant procedures or treatments requiring written consent
Research and clinical trials	Parent/guardian and assent or agreement from Mature Minor as required by HREC and National Statement. Re-consent the Minor when they turn 18	HREC approved consent form	Section 10.6.1 – Consent for children participating in research or clinical trials
Refusal of treatment	Parent/guardian unless the Minor is a Mature Minor Note, a court may override a refusal made by a Mature Minor or a parent or guardian based on the Minor's best interests	Document all discussions and statements about treatment refusal in the patient's Health Record	Section 8.4 – Can a Minor refuse treatment?
Discharge against medical advice	Parent/guardian unless the minor is a Mature Minor Note, a court may override a decision made by a Mature Minor or a parent or guardian based on the Minor's best interests	Written acknowledgement preferred Form: <i>Discharge against Medical Advice (for parents/guardians of a Minor)</i>	Section 6.3 – Discharge against medical advice
Opioid Substitution Therapy (OST) for patients aged 16-17 <sup>2</sup>	Patient with capacity AND 2 supportive medical opinions, one of which should be from an addiction medicine specialist	Dependency certificate in the form shown in Schedule 2 of the <i>Drug and Alcohol Treatment Act 2007</i>	Section 8.11 – What are the legal requirements for 'Special Medical Treatment' in relation to children?
Gender affirming medical treatment	See section 8.12	See section 8.12	See section 8.12 – Consent requirements for gender affirming medical treatment for Minors (young people under 18)

<sup>2</sup> Minors (aged less than 18 years) cannot access treatment from Medically Supervised Safe Injecting Centres.

## 11.4. Consent to Medical and Dental Treatment under the Mental Health Act

Type of Patient	General Medical and Dental treatment (including mental health treatment)	Emergency Surgery	Non-Emergency Surgery	ECT	Special Medical Treatment' under the Mental Health Act
Voluntary patient with capacity	Patient consent	Patient consent	Patient consent	Patient consent plus Mental Health Act sections 91-94	Patient consent plus Mental Health Act sections 102-104
Voluntary patient without capacity	Guardianship Act part 5 Substitute consent provisions	Guardianship Act part 5 Emergency provisions apply	Guardianship Act part 5 Substitute consent provisions	ECT cannot be provided to a voluntary patient who lacks capacity	Mental Health Act sections 102-104
Assessable patient without capacity	Mental Health Act section 84 or Guardianship Act Authorised medical officer may authorise treatment in accordance with the Mental Health Act section 84	Guardianship Act part 5 Emergency provisions apply	Guardianship Act part 5 Substitute consent provisions	Mental Health Act section 94 Approval of the Mental Health Review Tribunal required	Mental Health Act sections 102-104
Assessable patient with capacity	Mental Health Act section 84 Authorised medical officer may authorise treatment in accordance with the Mental Health Act section 84	Patient consent	Patient consent	Mental Health Act section 94 Approval of the Mental Health Review Tribunal required	Patient's consent and Mental Health Act sections 102-104
Involuntary patients (not including forensic and correctional patients)	Mental Health Act section 84 or Guardianship Act Authorised medical officer may authorise treatment in accordance with the Mental Health Act section 84	Mental Health Act section 99 Authorised medical officer or Secretary of Health may consent if of the opinion that the patient does not have capacity to consent, or has capacity but refuses to do so, or neither gives nor refuses consent and surgery is necessary as a matter of urgency in order to save the life of the patient or to prevent serious damage to the health of the patient or to prevent the patient from suffering or continuing to suffer significant pain or distress	Mental Health Act sections 100 and 101 Consent by Secretary only if Designated Carer agrees to surgery and patient does not have capacity to give consent to the operation and it is desirable having regard to the interests of the patient to perform the surgical operation on the patient. Application must be to MHRT where Designated Carer has not agreed to surgery. MHRT can only consent where a patient does not have capacity to consent or has capacity to consent but refuses to give that consent or neither gives nor refuses to give that consent and it is desirable having regard to the interests of the patient to perform the operation.	Mental Health Act section 94 Mental Health Review Tribunal by way of an ECT Determination following an ECT Administration Inquiry	Mental Health Act sections 102-104 Emergency – if the patient does not have capacity no consent required if Medical Practitioner considers Special Medical Treatment is necessary as a matter of urgency in order to save the patient's life or to prevent serious damage to the patient's health Non-Emergency MHRT may consent if the patient is 16 years or over and Tribunal is satisfied that the Special Medical Treatment is necessary to prevent serious damage to the health of the patient. *Special conditions apply for prescribed Special Medical Treatment

Type of Patient	General Medical and Dental treatment (including mental health treatment)	Emergency Surgery	Non-Emergency Surgery	ECT	Special Medical Treatment' under the Mental Health Act
Forensic and correctional patients with a mental illness	Mental Health Act or Guardianship Act Authorised medical officer may authorise treatment in accordance with the Mental Health Act section 84 or Guardianship Act	Mental Health Act section 99 (see emergency surgery for involuntary patients above)	Mental Health Act sections 100 and 101 (see non-emergency surgery for involuntary patients above)	Mental Health Act sections 94 MHRT by way of an ECT determination following an ECT administration inquiry	Mental Health Act sections 102-104 (see Special Medical Treatment for involuntary patients above)
Forensic and correctional patients without a mental illness	Mental Health Act section 84 Authorised medical officer may authorise treatment in accordance with the Mental Health Act section 84	Mental Health Act section 99 Authorised medical officer or the Secretary of Health may consent if the authorised medical officer or Secretary is of the opinion that the patient does not have capacity to consent to the operation and the surgery is necessary as a matter of urgency in order to save the life of the patient or to prevent serious damage to the health of the patient or to prevent the patient from suffering or continuing to suffer significant pain or distress	Mental Health Act sections 100 and 101 Application for consent by Secretary only if a Designated Carer agrees to surgery in writing. Secretary to consent only if patient does not have Capacity to give consent to the operation and it is desirable having regard to the interests of the patient to perform the surgery Application must be to MHRT where Designated Carer has not agreed to surgery. MHRT can only consent when a patient does not have Capacity to consent to the operation and it is desirable having regard to the interests of the patient to perform the surgery	Mental Health Act section 94 MHRT by way of an ECT determination following an ECT administration inquiry	Patient consent plus Mental Health Act sections 102-104 (see involuntary patients above)