

Special medical treatment guidelines

This fact sheet explains how the NCAT's Guardianship Division determines applications for the consent to special medical treatments where the person cannot give valid consent.

NCAT Guardianship Division

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

Only NCAT's Guardianship Division can consent to special medical treatments when the person cannot give a valid consent to their own treatment.

When hearing an application for consent to special medical treatment, the panel will always have three Tribunal Members — a Senior Member (Legal), a Senior Member (Professional) such as a doctor or other professional person, and a General Member (Community).

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First group

The first group of special medical treatments are:

- Sterilisation
- Termination of pregnancy procedures
- Treatments using aversive stimulus.

Before NCAT can consent to these treatments, it must be satisfied that the treatment is necessary to save the person's life and prevent serious damage to their health.

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

Second group

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 NCAT 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 person, and
- Where 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, NCAT will need evidence that addresses each element of the test.

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. NCAT 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.

NCAT 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, NCAT will need information about:

- the nature and extent of the person's disability in the form of 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 NCAT determines that the person is able to consent to the treatment, the decision about the treatment will be their own. In this case NCAT will not need to consider the issues of the appropriateness or need for the treatment.

Views of the person about the treatment

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

Where the person is able to indicate or express views they should attend the hearing so that NCAT 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 on the treatment should be provided.

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

- Has any counselling about the proposed treatment been provided to the person?
- What are the person's views on 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, NCAT will require a written report that addresses these questions.

If someone with expertise in the area has counselled the person about the treatment and the 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 NCAT.

Views of others

NCAT 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.

Separate representation

In all applications for sterilisation and in some other special medical applications NCAT may appoint a separate representative. This is an independent person, usually a lawyer, appointed by NCAT to represent the interests of a person who is the subject of an application.

The role of the separate representative is to present the views of the person wherever possible, and also other relevant information and submissions to assist NCAT in making decisions under the *Guardianship Act 1987*.

The separate representative is not bound by the views of the person. In this way they are different from a legal representative because they do not act on the instructions of a client. The separate representative is not an advocate for the interests of the other parties to the application.

Contact NCAT

1300 006 228 | www.ncat.nsw.gov.au

Interpreter Service (TIS) 13 14 50

National Relay Service for TTY users 13 36 77

For more information and assistance visit the NCAT website or contact NCAT's Guardianship Division on (02) 9556 7600 or 1300 006 228.