

# Consent to medical or dental treatment

This fact sheet provides information about applying to NCAT's Guardianship Division for consent to medical or dental treatment for people who lack the capacity to consent for themselves.

## Seeking treatment consent

### When is it necessary to seek substitute 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 NSW Civil and Administrative Tribunal (NCAT).

In most cases where substitute consent is required, there will be a person responsible.

## Person responsible

### Who is the person responsible?

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

Under section 33A(4) of the *Guardianship Act 1987*, there is a hierarchy of people who can be the person responsible.

A person responsible is one of the following people in order of priority.

1. **Guardian** – An appointed guardian (or enduring guardian) who has been given the right to consent to medical and dental treatments, **or**
2. **Spouse or partner** – If there is no guardian, a spouse, de-facto spouse or partner where there is a close continuing relationship, **or**
3. **Carer** – If there is no spouse or partner, an unpaid carer who provides or arranges for domestic support on a regular basis, **or**
4. **Relative or friend** – If there is no carer, a friend or relative who has a close personal relationship, frequent personal contact and a personal interest in the person'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.

In any case, NCAT 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.

For information about consent requirements for different types of treatment, refer to the table at the end of this fact sheet.



## Applying to NCAT

### When is an application to NCAT necessary?

An application to NCAT is necessary if the treatment is:

- *Special* medical treatment
- *Major* medical or dental treatment, and there is no *person responsible* or the *person responsible* is not available, or
- *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 for consent?

You need to complete and lodge the *Application for consent to medical or dental treatment* form. The application form is available on the NCAT website.

### How to lodge your application

To lodge your application form and attachments:

- **Post**  
NSW Civil and Administrative Tribunal  
Guardianship Division  
PO Box K1026, Haymarket NSW 1240
- **Deliver in person**  
Level 6 John Maddison Tower, 86-90 Goulburn Street, Sydney NSW 2000

When lodging your application, please return all pages of the form. There is no fee for lodging a Guardianship Division application.

### What happens next?

NCAT will conduct a hearing to decide if consent should be granted.

## Contact NCAT

**1300 006 228 | [www.ncat.nsw.gov.au](http://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.



## Summary of consent for medical and dental consent

Type	Treatment	Who can consent?
<b>Urgent treatment</b>	<p>Treatment considered urgent and necessary to:</p> <ul style="list-style-type: none"> <li>• Save a patient's life</li> <li>• Prevent serious damage to health</li> <li>• Prevent or alleviate significant pain or distress (not including special treatment)</li> </ul>	<b>No consent needed</b>
<b>Major treatment</b>	<ul style="list-style-type: none"> <li>• Any treatment involving general anaesthetic or sedation (except as listed in minor below)</li> <li>• Medications affecting the central nervous system (except as listed in minor)</li> <li>• Drugs of addiction (except as listed in minor)</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 to the patient</li> <li>• Any dental treatment resulting in the removal of all teeth or which significantly impairs chewing</li> </ul>	<p><b>Person responsible can consent.</b></p> <p>Request and consent must be in writing or, if not practicable, later confirmed in writing.</p> <p>If there is no person responsible or the person responsible cannot be located, or will not or is unable to respond, only <b>NCAT</b> can consent.</p>
<b>Minor treatment</b>	<ul style="list-style-type: none"> <li>• All treatments (except those listed in major or special)</li> <li>• Treatment involving general anaesthetic or 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 or mucous membrane.</li> </ul> </li> <li>• Medications affecting the central nervous system used: <ul style="list-style-type: none"> <li>- for analgesic, antipyretic, antiparkinsonian, antihistaminic, antiemetic, antinauseant or anticonvulsant purposes</li> <li>- only once</li> <li>- for PRN (as required) not more than 3 times per month</li> <li>- for sedation in minor procedures (unless dental)</li> </ul> </li> </ul>	<p><b>Person responsible can consent</b></p> <p>If no person responsible or the person responsible cannot, will not or is unable to consent, the <b>doctor or dentist</b> may treat without consent. However the doctor or dentist must note on patient's record that the treatment is necessary to promote the patient's health and wellbeing and that the patient is not objecting.</p>
<b>Special treatment</b>	<ul style="list-style-type: none"> <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> <li>• Termination of pregnancy</li> <li>• Treatments intended or likely to result in infertility</li> <li>• Vasectomy and tubal occlusion</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 the area</li> </ul>	<b>Only NCAT can consent</b>
<b>Objection to major or minor treatment</b>	If the patient indicates, or has previously indicated, that he or she does not want the treatment carried out.	<b>Only NCAT can consent</b>