

Special medical treatment

For people under 16 years

The following information explains how the NSW Civil and Administrative Tribunal (NCAT) Guardianship Division provides consent to special medical treatment on a child under 16 years.

Consent of the Tribunal is required

The NSW Civil and Administrative Tribunal (NCAT) has power under the *Children and Young Persons (Care and Protection) Act 1998* to consent to special medical treatments for people under 16.

The consent of NCAT must be sought before the following special medical treatments can be given to someone under 16 years of age:

- sterilisation
- vasectomy or tubal occlusion
- any medical treatment used for contraception or menstrual regulation prescribed in the *Children and Young Persons (Care and Protection) Regulation 2012*.

These treatments require NCAT's consent because of the age of the person who is proposed to receive the treatment, regardless of whether or not the young person has a disability.

There are no medications for contraception or menstrual control currently prescribed in the *Children and Young Persons (Care and Protection) Regulation 2012*.

The treatment must be needed to save life or prevent serious damage to health

Before NCAT can consent to the treatment, it must be satisfied that it is necessary to carry out the treatment on the young person in order to:

- save the young person's life, or
- to prevent serious damage to the young person's psychological or physical health.

Urgent treatment

If the treating medical practitioner is of the opinion that it is necessary, as a matter of urgency, to carry out the

special medical treatment on the young person in order to save their life or to prevent serious damage to their health then consent is not required.

In practice the need to carry out these treatments with that degree of urgency is unlikely to arise except in the most exceptional circumstances. NCAT can hear urgent applications after business hours.

Entitlement to legal representation

A party to an application for consent to special treatment for a person under 16 is entitled to be represented at the Tribunal's hearing.

Unlike other cases, the party does not need to seek leave from the NCAT.

NCAT may also appoint a separate representative for the young person where:

- it considers that the young person needs to be represented by a lawyer and cannot instruct a lawyer,
- the application is for treatment that will render the person permanently infertile, or
- NCAT considers the matter raises other issues requiring separate representation for the person.

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.

Relevant views about the application will be heard at the hearing. A decision will then be made as to whether consent will be given.

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

When hearing applications for consent to special medical treatment, each Tribunal always consists of three members — a senior member (legal), a senior member (professional) such as a doctor or other



professional person, and a general member (community).

The young person, their close relatives and friends or other people providing care to them should attend the hearing whenever possible and appropriate. NCAT will want to speak with the person's treating doctor and other relevant people, either 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, especially 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.

Views of the young person

One of the principles of the *Children and Young Persons (Care and Protection) Act 1998* is that when a child or young person is able to form views about a matter affecting their welfare, their views should be taken into account in accordance with their age and developmental capacity.

When the young person is able to indicate or express views, they should attend the hearing whenever possible 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 about the treatment should be provided to NCAT.

Other information to be provided

NCAT may also seek reports from the doctor proposing to carry out the treatment or other health professionals about what issues led to the proposal to give special medical treatment to the young person. NCAT will want to know whether other treatments, education or counselling have been provided to the person and to what extent this has worked to address the issues. For example, the young person may have been referred to Family Planning NSW.

NCAT should be provided with any medical reports or assessments about:

- Any disability the young person has, if they have a disability
- Why the proposed treatment is the recommended treatment for this young person
- Benefits, risks and side effects (if any) of the proposed treatment
- Benefits, risks and side effects (if any) of any alternative treatments
- Whether any other treatments have been tried in the past and the outcomes of such treatment
- Why the proposed treatment would save the person's life or prevent serious damage to the person's physical or psychological health.

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 support services to the person.

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.