

Consent to Medical Treatment by a Person Responsible

Consent to Medical or Dental Treatment

Part 6 of the *Guardianship and Administration Act 1995* (the Act) applies to a person with a disability who is incapable of giving consent to the carrying out of medical or dental treatment. Medical treatment is defined in section 3 of the Act.

A person is incapable of giving such consent if the person is incapable of understanding the general nature and effect of the proposed treatment, or is incapable of indicating whether or not they consent or do not consent to the carrying out of the treatment.

If the person is not capable of making medical or dental treatment decisions, a Person Responsible can make medical treatment decisions for them. This can include treatment which is continuing or ongoing and involves the administration of a restricted substance primarily to control the conduct of the person to whom it is given, but does not include other restrictive practices (see fact sheets for Restrictive Practices and Guardianship).

Who is the Person Responsible?

A Person Responsible for a child (under 18 years or over) will be the child's parent or the child's spouse.

A Person Responsible for an adult (18 years or over) will be one of the following, in order of priority:

- A guardian (this includes an enduring guardian);
- The person's spouse or someone with whom they are in a close and continuing relationship;
- An unpaid carer who is now providing support to the person who provided this support before the person entered residential care;
- A close relative or friend of the person, who has a close personal relationship with the other person through frequent personal contact and who has a personal interest in the person's welfare.

What are the responsibilities of a Person Responsible?

A Person Responsible must make decisions that are in the best interests of the person. For example, the Person Responsible should ask the medical practitioner questions about the proposed treatment such as:

- What is the proposed treatment and the consequences if the treatment is not carried out;

- Are there any alternative treatments available;
- What are the risks of the treatment or alternative treatment;
- and whether the treatment promotes and maintains the person's health and wellbeing.

A medical practitioner has a responsibility to give the Person Responsible this information and seek their consent to treatment before treating the person.

Consent should be provided in writing, but if not practicable, then orally and confirmed in writing as soon as practicable.

Is a Person Responsible always required to make a decision about proposed medical and dental treatment?

No. There are some instances where a Person Responsible's consent is not required:

- When there is a medical or dental emergency; or
- When the treatment is minor. For example, a visual examination of the patient's mouth, eyes, ears or throat, providing first aid or the administration of a non-prescription drug (such as painkillers or an antihistamine) within recommended dosages.

Are there medical and dental treatments that a Person Responsible cannot consent to?

Yes, a Person Responsible cannot consent to 'special treatment'. Only the Tasmanian Civil and Administrative Tribunal can consent to special treatment. Special treatment is:

- Treatment likely to lead to infertility;
- Termination of pregnancy;
- Removal of tissue for transplant;
- Psychosurgery;
- Any treatment involving an aversive stimulus

What is the Person Responsible does not want to or cannot make the decision?

An application can be made to the Tribunal.