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Decision Making and Consent Tools and templates

Summary: The Decision Making and Consent Tools and templates provide resources to be completed when supporting a person with disability to make decisions that affect them.



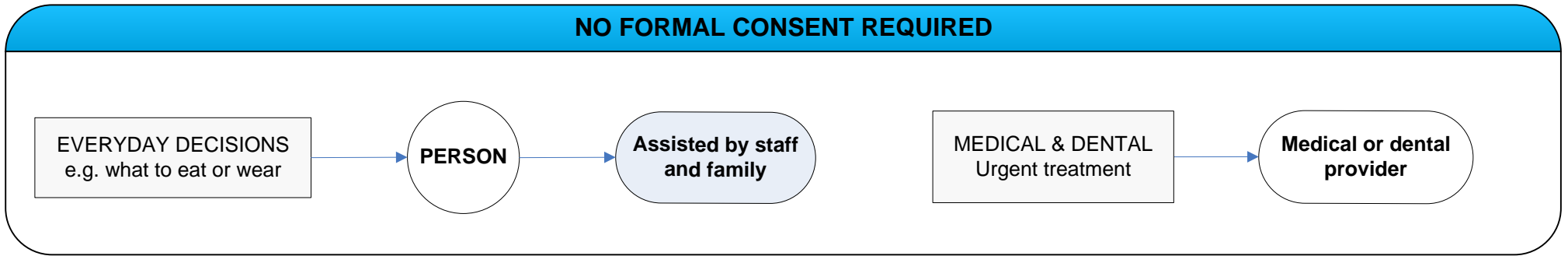
Tools and templates

Decision Making and Consent

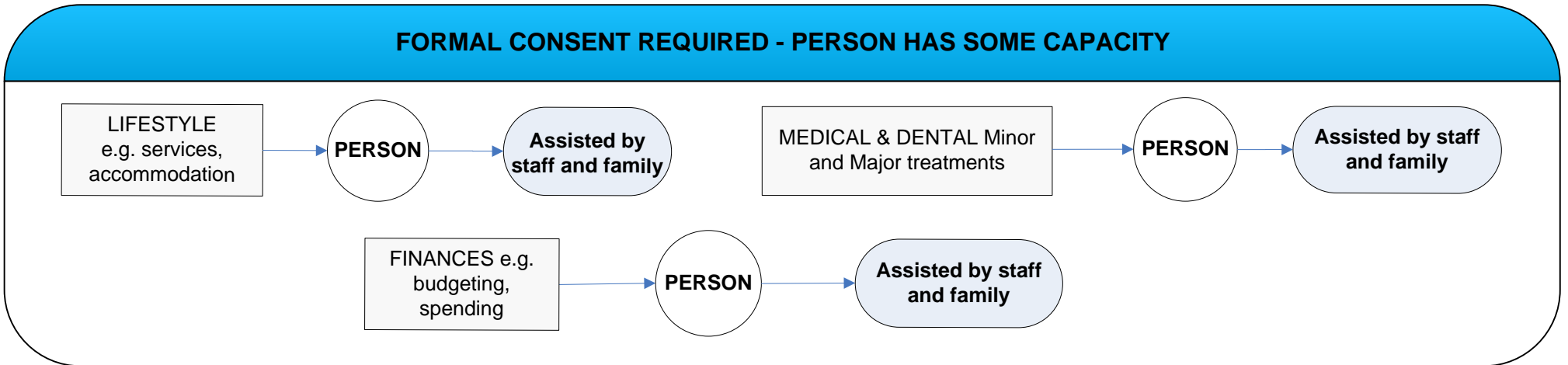
1. Decision making flowchart
2. NSW Civil and Administrative Tribunal Guardianship Division (NCAT) person responsible fact sheet
3. Application for consent to medical or dental treatment (NCAT)
4. Application to carry out medical or dental treatment for a person under guardianship of the Public Guardian

DECISION MAKING FLOWCHART

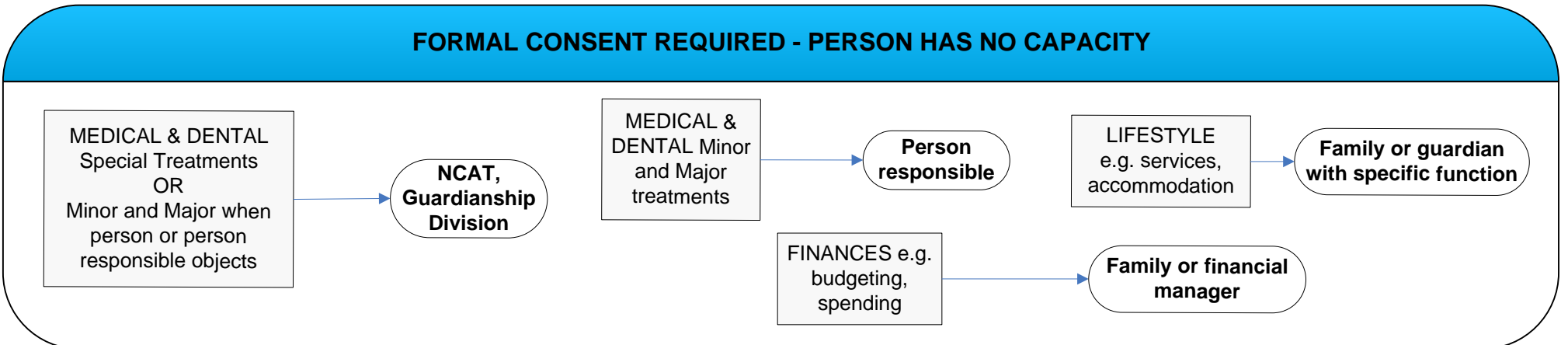
NO FORMAL CONSENT REQUIRED



FORMAL CONSENT REQUIRED - PERSON HAS SOME CAPACITY



FORMAL CONSENT REQUIRED - PERSON HAS NO CAPACITY





Fact sheet

'Person Responsible'

Consent to medical or dental treatment

Medical and dental practitioners have a legal and professional responsibility to get consent to treatments before treating a patient.

The patient usually gives consent. If the patient is not capable of consenting to their own treatment, the practitioner should seek consent from the patient's 'person responsible'. This is required by the *Guardianship Act 1987*.

Who is the 'person responsible'?

A 'person responsible' is not necessarily the patient's next of kin. A 'person responsible' is either:

- a guardian (including an enduring guardian) who has the function of consenting to medical, or dental treatment

or, if there is no guardian:

- the most recent spouse or de facto spouse with whom the person has a close, continuing relationship. 'de facto spouse' includes same sex partners

or, if there is no spouse or de facto spouse:

- an unpaid carer who is now providing support to the person or provided this support before the person entered residential care

or, if there is no carer:

- a relative or friend who has a close personal relationship with the person.

If a person identified as being a 'person responsible' declines in writing to exercise the function of 'person responsible' or a medical practitioner or other qualified person certifies in writing that the person identified as 'person responsible' is not capable of carrying out those functions, then the person next in the hierarchy is the 'person responsible.'

If the treatment is special treatment, the practitioner must seek consent from the NSW Civil and Administrative Tribunal before treating the patient.

If there is no 'person responsible' and the treatment is major treatment, the practitioner must seek consent from the Tribunal before treating the patient.

If the practitioner considers the treatment to be urgent and necessary, they may treat without consent.

For more information about urgent, special, major and minor treatment, see the guide overleaf.

Rights and responsibilities of a 'person responsible'

If you are the 'person responsible' for someone who cannot consent for themselves you have a right and a responsibility to know and understand: what the proposed treatment is what the risks and alternatives are you can say "yes" or "no" to the proposed treatment you can seek a second opinion.

The practitioner has a responsibility to give you this information and seek your consent to the treatment before treating the patient.

Is there anything a 'person responsible' cannot do?

When someone is incapable of consenting to their own treatment, a person responsible cannot:

- consent to special medical treatment, such as sterilisation operations, terminations of pregnancy and experimental treatments
- consent to a treatment if the patient objects to the treatment.

Guardianship Division

Postal address

Locked Bag 9,
Balmain NSW 2041

Street address

Level 3, 2a Rowntree St Balmain NSW 2041

Telephone (02) 9556 7600 or 1300 006 228

(Telephone Typewriter) (02) 9556 7634

Fax (02) 9555 9049

Email gd@ncat.nsw.gov.au

Website www.ncat.nsw.gov.au

Who can give substitute consent for medical or dental treatment?

Type of treatment	Consent requirements
<p>Treatment considered urgent and necessary to:</p> <ul style="list-style-type: none"> • save patient's life • prevent serious damage to health • prevent or alleviate significant pain or distress. 	<p>No consent needed</p>
<p>Major treatment</p> <ul style="list-style-type: none"> • Any medical or dental treatment involving general anaesthetic or other sedation (except as listed in Minor below). • Medications affecting the central nervous system (except as listed in Minor below). • Drugs of addiction. • Long-acting injectable hormonal substances for contraception or menstrual regulation. • Any treatment for the purpose of eliminating menstruation. • Testing for HIV. • Any treatment involving substantial risk. • Any dental treatment resulting in removal of all teeth or significantly impairing ability to chew food. 	<p>Person responsible can consent.</p> <p>If there is no person responsible or the person responsible is not available then only the NSW Civil and Administrative Tribunal can consent.</p> <p>The request and consent must be in writing or, if not practicable, later confirmed in writing.</p>
<p>Minor treatment</p> <ul style="list-style-type: none"> • All medical and dental treatments (except those listed in Major or Special). • Treatment involving general anaesthetic or other sedation: <ul style="list-style-type: none"> - for management of fractured or dislocated limbs - for endoscopes inserted through an orifice, not penetrating the skin or mucous membrane. • Medications that affect the central nervous system which are used: <ul style="list-style-type: none"> -for analgesic, antipyretic, antiparkinsonian, antihistaminic, antiemetic, antinauseant or anticonvulsant purposes - only once - on a PRN basis (as required) not more than 3 times per month - as sedation in minor procedures. 	<p>Person responsible can consent.</p> <p>The doctor or dentist may treat without consent if the patient is not objecting and there is no person responsible or the person responsible is not available.</p> <p>It must be noted on the patient's record that the treatment is necessary to promote the patient's health and wellbeing, and that the patient is not objecting.</p>
<p>Special treatment</p> <ul style="list-style-type: none"> • Androgen-reducing medications for behavioural control. • Termination of pregnancy. • Treatments intended or likely to result in permanent infertility. • Vasectomy and tubal occlusion. • Aversives – mechanical, chemical or physical. • Any new treatment that has not yet gained the support of a substantial number of doctors or dentists specialising in area. <p>Use of medication affecting the central nervous system where dosage, duration or combination is outside accepted norms.</p>	<p>Only the NSW Civil and Administrative Tribunal can consent.</p>
<p>Major or minor treatment when the patient is objecting</p> <p>If the patient indicates, or has previously indicated, that he or she does not want the treatment carried out.</p>	<p>Only the NSW Civil and Administrative Tribunal can consent.</p>



Application for Consent to medical or dental treatment

GUARDIANSHIP DIVISION

Before completing this application form, please refer to the fact sheet 'Consent to medical or dental treatment' to help you decide if consent is required and who can consent.

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

1. The applicant

Who is making this application for consent?

- the treating doctor, provide details below
- the person's usual doctor, provide details below
- another person, provide details below

title Dr Mr Mrs Ms Other, specify

given name _____

family name _____

relationship to the person _____

qualifications or specialty _____

street _____

suburb/town, state, postcode _____

daytime phone _____

after hours phone _____

mobile phone _____

fax _____

pager _____

email _____

2. The person

Who is this application about?

title Mr Mrs Miss Ms Other, specify

given name _____

family name _____

other names by which
this person is known _____

date of birth _____

gender male female _____

What is the person’s usual permanent address?

- Where does the person usually live? at home, provide details below
 at the home of a family member or friend, provide details below
 at a care facility, provide details below
 no fixed address

name of family member, friend or care facility _____
street _____
suburb/town, state, postcode _____
phone _____
mobile phone _____
fax _____
email _____

What is the person’s current location? (if different from above)

name of family member, friend or care facility _____
street _____
suburb/town, state, postcode _____
name of contact (if applicable) _____
phone _____
mobile phone _____
fax _____
email _____

Details about the person

What disabilities or other health-related factors affect the person’s decision-making capacity?

- dementia mental illness
 intellectual disability advanced age
 brain injury neurological
 other, provide details:

Does the person regard themselves as belonging to any specific ethnic, cultural or religious group?

- No Yes, please provide details

Does the person speak a language other than English at home?

- No Yes, what other language?

Have you told the person that you are making this application?

- Yes, and he or she: Supports or Opposes the application
 No

Does the person have a guardian or enduring guardian?

If yes, please attach a copy of the guardianship order or enduring guardianship appointment.

No Yes

title: _____

given names: _____

family name: _____

street / PO Box: _____

suburb/town, state, postcode: _____

daytime phone: _____

mobile phone: _____

fax: _____

email: _____

Does the person have a spouse?

Spouse means a husband, wife or de facto partner and includes same sex relationships.

The relationship must be close and continuing.

No Yes

title: _____

given names: _____

family name: _____

street / PO Box: _____

suburb/town, state, postcode: _____

daytime phone: _____

mobile phone: _____

fax: _____

email: _____

Does the person have a carer?

A carer is someone who provides domestic services and support to the person, or arranges services and support for the person.

A carer does not include professional carers who receive remuneration for their services. However, a carer's pension does not exclude someone from being a carer.

If the person resides at a facility (such as a nursing home or group home), the carer is the last person to have cared for the person before they became a resident at the facility.

No Yes

title: _____

given names: _____

family name: _____

street / PO Box: _____

suburb/town, state, postcode: _____

daytime phone: _____

mobile phone: _____

fax: _____

email: _____

Is there any other person who may qualify as a 'person responsible'?

Other people who may qualify as a person responsible include a friend or relative who has a close and continuing relationship with the person and who isn't the person's spouse or carer.

Person responsible is defined in s33A(4) of the *Guardianship Act 1987* (NSW).

For more information refer to *Information for Applicants: Who is the 'person responsible'?*

No Yes

title: _____

given names: _____

family name: _____

street / PO Box: _____

suburb/town, state, postcode: _____

daytime phone: _____

mobile phone: _____

fax: _____

email: _____

3. The need for substitute consent

Refer to the attached *Information for Applicants: Who can give substitute consent for medical or dental treatment* to find out when you need substitute consent and who can give the consent.

Provide additional comments where appropriate.

Has the proposed treatment been discussed with the person?

No Yes

Is the person capable of understanding the nature and effect of the treatment?

No, give reasons Yes

Is the person capable of indicating their consent?

No, give reasons Yes

Has the person expressed any views about the proposed treatment in the past?

No Yes, provide details

Why is consent being sought from NCAT?

- The treatment is *special* medical treatment
 - The treatment is *major* and there is no *guardian* or *person responsible* for the person
 - The treatment is *major* and the *person responsible* cannot be located or has refused to give consent
 - The person objects to the treatment
 - There is a dispute about the treatment
 - Other, provide details
-

4. The proposed treatment

Please provide additional comments where appropriate.

What is the condition requiring treatment?

What is the proposed treatment?

Does the treatment involve the withdrawal or limitation of life sustaining treatment?

No Yes, provide details

Is the treatment intended to manage the person's behaviour?

No Yes, provide details

Are the person's religious beliefs in conflict with the proposed treatment?

No Yes, provide details

What is the proposed treatment date?

If treatment has already started, when did it commence?

Is the treatment ongoing?

No Yes, provide details. Indicate period of time for which consent is required.

Where will the treatment be carried out?

Will the treatment involve a general anaesthetic or other sedation?

No Yes, provide details.

Does the treatment involve any significant risks or side effects?

No Yes, provide details.

If extraction of teeth is proposed, will it significantly impair the person's ability to chew for an indefinite or prolonged period of time?

No Yes, provide details.

How will the proposed treatment benefit the person?

Are there alternative treatments for the person's condition?

No Yes, indicate why the proposed treatment is preferred

What are the likely consequences if the proposed treatment is not carried out?

Is the person receiving any other treatment or medication?

No Yes, provide details. Include dosage, if applicable

Are you aware of anyone who disputes that the treatment is required?

No Yes, provide details

the person themselves

health professional, provide name

other person(s), provide name

5. Other people involved

You must include details of the person's guardian, the person's spouse and the person's carer in section 2 of this form.

Who is the doctor or dentist providing the treatment?

title _____

given name _____

family name _____

qualifications or specialty _____

street _____

suburb/town, state, postcode _____

daytime phone _____ after hours phone _____

mobile phone _____

fax _____ pager _____

email _____

Does this person regularly treat the person? Yes No

Who is the person's usual doctor? (if not the same as above)

Don't know To my knowledge, there is none

title _____

given name _____

family name _____

qualifications or specialty _____

street _____

suburb/town, state, postcode _____

daytime phone _____ after hours phone _____

mobile phone _____

fax _____ pager _____

email _____

6. Supporting material

Please attach any supporting documents to the application.

NCAT relies on information provided in this form and relevant professional documentation to make its decision. Please list below any documents (e.g. medical opinions, test results, referral letters, assessments, x-rays, specialist reports) that you have attached.

title of document	_____
document date	_____
author and organisation	_____
relationship of author to person	_____
title of document	_____
document date	_____
author and organisation	_____
relationship of author to person	_____
title of document	_____
document date	_____
author and organisation	_____
relationship of author to person	_____
title of document	_____
document date	_____
author and organisation	_____
relationship of author to person	_____

7. The hearing

Is the person able to express views to the Tribunal?

How can we contact the person during the hearing?

How can the Tribunal contact the following people during the hearing?

	best number to contact	best time to contact
the treating doctor	_____	_____
the person's usual doctor	_____	_____
the applicant	_____	_____
the <i>person responsible</i>	_____	_____

other, provide details below

name

relationship

8. Applicant's declaration

Having read through this completed application:

- I consider that, to the best of my knowledge, all of the information is true and accurate.
- I have not intentionally left out important information.

Signature of applicant

Date

To lodge your application

To lodge your application, return all pages of the form to NCAT's Guardianship Division. Check that you have completed all relevant items and signed the application form.

NCAT Guardianship Division

Postal address: PO Box K1026, Haymarket NSW 1240
DX 11539 Sydney Downtown

Street address: Level 6 John Maddison Tower, 86-90 Goulburn Street, Sydney

Telephone: (02) 9556 7600 or 1300 006 228
Interpreter Service (TIS) 13 14 50
National Relay Service for TTY Users 13 36 77

Email: gd@ncat.nsw.gov.au

Website: www.ncat.nsw.gov.au



Central Office/ Western Regional Office L-7, 160 Marsden St Parramatta NSW 2150 Tel 02 8688 2650 Fax 02 8688 9797
Southern Regional Office L-2 Downing Centre, 143-147 Liverpool St Sydney NSW 2000 Tel 02 9287 7660 Fax 02 9287 7355
Northern Regional Office L-3, 4 Watt St Gosford NSW 2250 Tel 02 4320 4888 Fax 02 4320 4818

**APPLICATION TO CARRY OUT MEDICAL OR DENTAL TREATMENT FOR A PERSON UNDER
 GUARDIANSHIP OF THE PUBLIC GUARDIAN
 (GUARDIANSHIP ACT 1987 – PART 5)**

1. INFORMATION ABOUT THE PATIENT

NAME _____ D.O.B: / /
 PRESENT LOCATION _____ TELEPHONE _____

2. INFORMATION ABOUT THE APPLICANT

NAME: _____ RELATIONSHIP TO PATIENT _____
 ADDRESS: _____
 TELEPHONE _____ FAX _____

3. TREATING MEDICAL OR DENTAL PRACTITIONER (if different from above)

NAME: _____
 PRACTICE ADDRESS: _____
 TELEPHONE _____ FAX _____

THE FOLLOWING INFORMATION MUST BE PROVIDED BY THE TREATING PRACTITIONER

4. PATIENT VIEWS

Has the treatment been discussed with the patient? **YES []** **NO []**

In the opinion of the treating medical or dental practitioner,
 is the patient able to understand what the treatment entails? **YES []** **NO []**

Why is the patient unable to understand the nature and effect of the treatment?

Has the patient indicated any views about the treatment now or in the past? If so, what are these?

Does the patient object to the proposed treatment? **YES []** **NO []**

If 'yes' what is the nature of the patients objection?

5. VIEWS OF SIGNIFICANT OTHERS

If relevant, what are views of joint guardian, spouse, family, carer to the treatment?

6. PATIENTS CONDITION

What is the **condition** requiring treatment? _____

7. PROPOSED TREATMENT

DATE: _____ TIME: _____

What is the **proposed treatment** (including dosage if applicable)? _____

For what **period of time** is consent requested? _____

Does the treatment involve any **significant risk or side effects**? If so, what are they?

8. Are there reasonable alternative treatments for the condition? If so, please list them and describe any associated risks and side effects and briefly explain why the proposed treatment is preferred.

What are the likely consequences of not carrying out the proposed treatment? _____

What other treatment/medication (& dosage) is the patient receiving? _____

NAME OF PERSON COMPLETING FORM: _____

SIGNATURE: _____ DATE: _____

Office use only

Does the Public Guardian have the authority to override objections under Section 46(a)? **YES []** **NO []**

Are there any relevant previous applications?

Date(s): _____ Details: _____

I hereby consent to the treatment specified (7) above of the application by _____
being provided to patient _____

Conditions (if relevant): _____

Signature _____ (for the Public Guardian)

Name (in print) _____ Date: _____