



**Guide and Application Form  
for Mental Health Treatment  
Consent from the Public  
Guardian**

# Applying to the Public Guardian for Mental Health Treatment Consent

**In this guide you will find information and an application form for requesting Mental Health Treatment Consent from the Public Guardian**

The information in this guide is up to date as at March 2017. Please refer to the relevant legislation and policies before you complete the application.

For any queries, you may contact the Office of the Public Guardian by email to [MHA@publicguardian.qld.gov.au](mailto:MHA@publicguardian.qld.gov.au)

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## 1. Overview

This guide is to be used when completing the attached application form for obtaining consent from the Public Guardian for mental health treatment of an Adult who is living with impaired capacity.

The guide is to be read in conjunction with the relevant legislation, including but not restricted to the *Mental Health Act 2016*, *Guardianship and Administration Act 2000*, *Powers of Attorney Act 1998* and *Public Guardian Act 2014*.

The guide is also to be read in conjunction with the following related policies and documents:

- [Consent to Mental Health Treatment and Care - Public Guardian Policy](#)
- [General Principles – Guardianship and Administration Act 2000](#)
- [National Standards of Public Guardianship – Australian Guardianship and Administration Council](#)
- [Chief Psychiatrist Policy and Practice Guidelines](#)

The contents of this guide includes:

- **Information:** key information regarding the application for the Public Guardian to provide Mental Health Treatment Consent.
- **Considerations when completing the application form for mental health consent:** provides information to assist the applicant in completing the application form.
- **Checklist of supporting documents:** provides the applicant with a list of documents to support the progression of the requested mental health consent.
- **Application form:** please complete the attached application form and email the form and relevant documents to [MHA@publicguardian.qld.gov.au](mailto:MHA@publicguardian.qld.gov.au).

## 2. Information

### 2.1 Role, Purpose and Function of the Public Guardian.

The Office of the Public Guardian is an independent statutory body that protects the rights and interests of vulnerable Queenslanders, including Adults with impaired capacity to make their own decisions.

The purpose of the Public Guardian is to advocate for the human rights of our clients:

- For **Adult clients**, this means advocating for their rights, access to services, independence and choice as part of a supported decision-making model.

- For **our children and young people clients**, this means advocating for their rights, access to services and where appropriate, their independence and choice.
- **Advocacy** means understanding the lives and views of our clients with the aim of promoting and protecting their human rights. Advocacy can mean working to prevent or address discrimination, abuse or neglect. Advocacy does not mean taking over a client's life or problems. Advocacy does not mean taking over the roles and responsibilities of other government agencies or service providers.

The function of the Public Guardian for the purpose of Mental Health Treatment Consent, is to act as:

- Attorney, under an enduring power of attorney; or
- Guardian if appointed by the Queensland Civil and Administrative Tribunal (QCAT).

The Public Guardian's framework for Adults with impaired capacity is informed by:

- Universal Declaration of Human Rights
- United Nations Convention on the Rights of Persons with Disabilities
- *Public Guardian Act 2014*
- *Guardianship and Administration Act 2000*
- *Powers of Attorney Act 1998*
- *Mental Health Act 2016*
- *Forensic Disability Act 2011*

This is a brief summary of the Role, Purpose and Function of the Public Guardian for the purpose of this guide, please refer to the Public Guardian's [website and fact sheets](#) for further information.

## 2.2 Policy information for Mental Health Treatment and Care Consent

The Public Guardian has developed a policy in line with the legislative changes and the introduction of the *Mental Health Act 2016*. The policy is to be read in conjunction with this guide when completing the application form. [View the Public Guardian's policy - Consent to Mental Health Treatment \(the Policy\)](#)

In accordance with the Consent to Mental Health Treatment and Care Policy by the Public Guardian, please be advised of the following:

- All requests to provide consent for mental health treatment for Guardianship or Attorney clients under the *Mental Health Act 2016*, will be considered by the Public Guardian on a **case-by-case** basis.

- The Public Guardian will not provide consent to mental health treatment as Statutory Health Attorney (SHA).
- Applications for mental health treatment consent are to be emailed to [MHA@publicguardian.qld.gov.au](mailto:MHA@publicguardian.qld.gov.au). Applications will only be accepted via email and will only be considered during business hours, Monday to Friday.
- For urgent health care or in cases of an emergency, as per Section 63 of the *Guardianship and Administration Act 2000*, health care of an Adult may be carried out without consent if the health provider reasonably considers the Adult has impaired capacity for the health matter concerned; and either the health care should be carried out urgently to meet imminent risk to the Adult's life or health; or the health care should be carried out urgently to prevent significant pain or distress to the Adult and it is not reasonably practicable to get consent from a person who may lawfully provide consent.
- The Public Guardian will make all reasonable efforts to support the Adult to exercise their own decision making capacity with respect to their mental health treatment.
- Where the Public Guardian considers that the **rights and interests** of the Adult are not being adequately protected, heard or represented, concerns will be escalated to the administrator of the relevant authorised mental health service, and where necessary, the Chief Psychiatrist, and Hospital and Health Services.

### 2.3 Who can submit an application for Mental Health Treatment Consent?

- An 'authorised doctor', 'authorised psychiatrist' or 'authorised mental health practitioner' as defined under the *Mental Health Act 2016* may submit an application to the Public Guardian for mental health treatment consent. This is in accordance with the Chief Psychiatrist Policy – Appointment of Authorised Doctors and Authorised Mental Health Practitioners.

### 2.4 What happens if the client objects to the proposed Mental Health Treatment?

- If the Adult objects to the proposed mental health treatment, it is the responsibility of the 'authorised doctor', 'authorised psychiatrist' or 'authorised mental health practitioner' to determine whether or not the objection can be overridden in accordance with Section 67 of the *Guardianship and Administration Act 2000*. For further information, see the Policy section 4.2.
- It is the 'authorised doctor', 'authorised psychiatrist' or 'authorised mental health practitioner' responsibility to determine the Adult's compliance to the proposed mental health treatment.

### 2.5 Medications and/or treatment for non-psychiatric conditions or illness

- See section 4.1 of the Policy for consent for medications for mental illness. If you require the Public Guardian to provide health care consent please call 1300 753 624. Alternatively, please go to the [website](#) for further information.

## 2.6 Use of restraint

- The Public Guardian will not provide consent whereby restrictive practices including Physical Restraint is and/or will be too frequently used. See section 4.3 of the Policy.

## 2.7 Mental health treatment in a locked inpatient unit

- The Public Guardian is unable to provide consent to mental health treatment if the proposed treatment is in a locked inpatient unit and is predominantly required to protect the safety of others. See section 4.4 of the Policy.

## 2.8 Scope of Mental Health Treatment Consent

- The Public Guardian will consider providing time limited consent to the proposed mental health treatment. See section 4.6 of the Policy.
- The Public Guardian, may request additional information or further medical opinions in relation to the proposed mental health treatment.
- The Public Guardian may place conditions on the consent provided.
- Alternatively, the Public Guardian may not provide consent under the 'Less Restrictive Way'.
- Examples of not providing consent or placing conditions on the consent include:
  - If the request for consent for the mental health treatment is for the administration of off-label medication, anti-libidinal medication or medications with known serious or significant side effects
  - If the treatment is lengthy for the individual and require regular review or where repeat requests for consent for the same treatment and care are made.
  - Where the client has a history of trauma, including use of physical or mechanical restraint or force, or seclusion in the administration of treatment and care.

## 3. Considerations when completing the application form for mental health treatment consent

All considerations for the provision of mental health treatment consent will be made in relation to the requirements set out under the *Guardianship and Administration Act 2000* and *Powers of Attorney Act 1998*.

The following outlined sections correspond to the sections in the application form for mental health treatment consent.

### 3.1 Section 1: Details of the ‘Authorised Doctor’, ‘Authorised Psychiatrist’ or ‘Authorised Mental Health Practitioner’ applying for mental health treatment consent for an Adult living with Impaired Capacity

- Please provide your personal and contact details as the ‘Authorised Doctor’, ‘Authorised Psychiatrist’ or ‘Authorised Mental Health Practitioner’ completing the application form.

### 3.2 Section 2: Details of the Adult who the applicant is about

- Please provide the personal and contact details of the Adult, to whom the application form relates to. It is recommended that you use the Adult’s name as it appears on official documentation (e.g. birth certificate, driver’s license).
- This section requires the applicant to recognise and take into account the Adult’s age-related, gender-related (e.g. Transgender/Transsexual), communication, hearing, visual, speech and special needs.
- This section also requires the applicant to recognise and take into account the Adult’s identification and unique cultural, communication and other needs as an Aboriginal and/or Torres Strait Islander.

### 3.3 Section 3: Details of Carer/Support Person 1 & 2

- Please provide the personal and contact details of the Adult’s carer and/or support person. Including family, friends, carer and other support persons.
- This section is to provide the Adult with access to other persons to help express their views, wishes and preferences.
- This section highlights the importance of the Adult’s right to be a valued member of society and the importance of engaging and maintaining the Adult’s existing supportive relationships.
- Hence, the Adult’s family, carers and other support persons are to be involved in the decisions relating to mental health treatment and care, subject to the Adult’s right to confidentiality and privacy.

### 3.4 Section 4: Details of the Adult’s Impaired Capacity

- Although an Adult may be experiencing impaired capacity, the applicant must recognise and take into account that the Adult is presumed to have capacity regarding their mental health treatment.
- The applicant must consider and take into account that the Adult has the same human rights regardless of their capacity.
- The applicant must consider and take into account the importance of empowering the Adult to exercise their basic human rights.
- The applicant is to provide Information in this section that speaks directly to the Adult’s capacity regarding their mental health condition and proposed mental health treatment and not to any other matters that are not relevant.



### 3.5 Section 5: Background information of the Adult

- This section ensures that the Adult's cultural and/or religious rights are taken into consideration and are adhered to appropriately.
- This includes the importance of maintaining the Adult's cultural and linguistic environment and values, which must be considered and taken into account with regard to the proposed mental health treatment.
- If the Adult identifies as Aboriginal and/or Torres Strait Islander, the applicant must consider and take into account mental health treatment which is consistent with Aboriginal tradition or Islander custom and is culturally appropriate and respectful.
- If the Adult identifies with a culturally and linguistically diverse background, the applicant must consider and take into account the Adult's cultural, religious and spiritual beliefs and practices.
- If the Adult identifies as linguistically diverse they are to be assisted by an interpreter.

### 3.6 Section 6: Clinical information of the Adult

- This section should include information that meet the needs, goals and aspirations of the Adult.
- The applicant is to consider mental health treatment which is least restrictive to the Adult's human rights in accordance with the *Guardianship and Administration Act 2000*.
- The proposed mental health treatment must be based on contemporary evidence-informed practice and recovery-oriented services.
- The applicant must consider and take into account the Adult's right to respect for their human worth and dignity as an individual.

### 3.7 Section 7: Consultation with the Adult and their support network

- This section relates to safeguarding the Adult's rights and interests, and whether a thorough and comprehensive consultation process has been conducted by the treating team with the Adult and support persons regarding the proposed mental health treatment.
- Explain how the Adult's right to choose and participate in decisions affecting their life have been taken into account.
- The applicant must consider and take into account the Adult's right to participate in their own recovery and wellbeing which is tailored to their individual needs and is imposed in the least restrictive way.
- The Adult must be provided the necessary support and access to information, to enable the Adult to participate in decisions affecting their life.
- The applicant must consider and take into account a fair and proper process of consultation regarding the mental health treatment with the Adult and support persons.

### 3.8 Section 8: Signature of the 'Authorised Doctor', 'Authorised Psychiatrist' or 'Authorised Mental Health Practitioner', completing the application for mental health treatment consent

- This section must be signed and dated by the stated authorised person completing the application form
- The application form and supporting documents will only accepted via email during business hours, Monday to Friday: [MHA@publicguardian.qld.gov.au](mailto:MHA@publicguardian.qld.gov.au).
- If you have any questions in relation to this guide or the application form, please email [MHA@publicguardian.qld.gov.au](mailto:MHA@publicguardian.qld.gov.au).

## 4 Checklist of supporting documents

It is recommended a copy of the following documents are provided with the application form for mental health treatment consent from the Public Guardian, where applicable:

- Mental State Examination (MSE)
- Risk Assessment/s
- Psycho-education provided to Adult
- Mental Health Treatment Plan
- Mental Health Intervention/Relapse Prevention Plan
- Mental Health Clinical Report
- Advance Health Directive
- Advance Health Directive for Mental Health

## 5 Application Form

The application for mental health treatment consent form can be accessed via the [Office of the Public Guardian website](#).