

<b>POLICY:</b>	<b>Forensic examinations of adults with impaired capacity</b>
<b>Version/Date effective</b>	<b>ver. 2 / July 2014</b>
<b>Application</b>	All OPG staff (adult)

## 1. Policy statement

The *Public Guardian Act 2014 (PGA)* and *Guardianship and Administration Act 2000 (GAA)* enable the Public Guardian to consent to the forensic examination of an adult with impaired capacity who is suspected of being a victim of crime, so that police can gather relevant forensic evidence. In the *GAA*, a forensic examination is a “*medical or dental procedure for the adult that is carried out for forensic purposes, other than because the adult is suspected of having committed a criminal offence*” (Schedule 4). The Public Guardian consents to forensic examinations where these are in adults’ best interests.

## 2. Overarching principles

Under s.38 of the *PGA*<sup>1</sup>, the Public Guardian may consent to a forensic examination if:

- (a) *it is in the adult’s best interests; and*
- (b) *any of the following apply-*
  - (i) *no guardian or attorney is appointed or available to consent*
  - (ii) *any guardian or attorney for the adult who is available has failed to consent*
  - (iii) *the adult’s interests would not be adequately protected if the consent of any guardian or attorney for the adult were sought.*

A forensic examination is not a healthcare matter, and consent cannot be given as statutory health attorney or as guardian for health matters. The legislative basis is either:

- s.38 *PGA* (no guardianship appointment or appointed for specific matters only) **or**
- as a guardianship decision (only clients for whom the Public Guardian holds an “all personal matters” appointment). Consent to a forensic examination is listed as a “personal matter” under Schedule 2, Part 2 of the *GAA*.

Given the significant personal intrusion and distress that may be involved in a forensic examination, the **Public Guardian must personally approve** and sign off on all requests.

Staff should keep in mind the **time sensitive nature** of the situation, and progress these matters **urgently**, for the Public Guardian’s consideration on the same business day.

Staff should also be mindful of the **adult’s overall circumstances**, and consider whether any other actions (by OPG or other parties) may be required to protect their rights and well-being.

## 3. Procedure

<b>3.1 Notification to OPG</b>	↓ Client is victim of crime
<b>3.2 Immediate escalation</b>	↓ To team leader/regional manager
3.3 Gather relevant information Determine legislative basis Consider other protective actions	↓ Impaired capacity? Client’s best interests? Expressed views? Current guardianship appointment?
<b>3.4 Seek Public Guardian’s decision</b>	↓ Use the attached template
<b>3.5 Communicate and Document</b>	↓ Document all information in Resolve

<sup>1</sup> s.38 of the *Public Guardian Act 2014* replaces s.198A of the *Guardianship and Administration Act 2000*

### 3.1 Notification to OPG

Staff may be advised of the possible need for a forensic examination in one of three ways:

- (a) Consent request to an **OPG health consent officer** from a police officer or health care provider (usually, but not only, in relation to non-clients) or
- (b) **Guardian** becomes aware of circumstances that warrant a forensic examination for a current guardianship client (e.g. a third party advises that a client has been assaulted); or
- (c) In the course of their usual duties, **other OPG staff** (incl. investigations, legal, healthcare and CVP staff) become aware of circumstances that may warrant a forensic examination for an adult with impaired capacity (e.g. adult is the victim of an alleged assault).

### 3.2 Immediate escalation

- (a) The officer advises their **team leader/manager** immediately for appropriate escalation to senior management. For all after-hours requests, the Public Guardian is to be advised.

### 3.3 Information gathering

- (a) The officer gathers relevant information and completes the **attached template** to assist the Public Guardian in making the decision, taking into consideration:
  - the adult's capacity for the decision, and their overall circumstances
  - the reason for the examination
  - the adult's views/wishes, if known
  - whether there is an appointed guardian/attorney already in place
  - the nature and impact of the procedure.
- (b) The officer makes a determination as to whether the forensic examination is in the adult's **best interests**.
- (c) The officer determines the **legislative basis** for the decision. Either:
  - s.38 *PGA* (no guardianship appointment or appointed for specific matters only) **or**
  - as a guardianship decision (for "all personal matters" guardianship appointments).
- (d) The officer considers whether any **additional** or **immediate actions** might be required to protect the adult's rights and safety. For example:
  - *Are the decision-making arrangements currently in place for the adult adequate to protect their overall rights and interests?*
  - *Have steps been taken (e.g. by the service provider) to prevent further assault?*
  - *Are other decisions needed? (e.g. change of accommodation, contact restriction)*

### 3.4 Decision & 3.5 Communicate & Document

- (a) The officer discusses the issue with the **Public Guardian** – obtains direction or decision.
- (b) The officer **communicates** the decision, and its legislative basis, to the relevant person. The attached letter template (Attachment B) is used, signed by the Public Guardian.
- (c) All records regarding the enquiries made, information gathered, decision-making process and the decision made must be **recorded in Resolve**.

**Before proceeding**  Advise your supervisor  Read the **Forensic Examination** policy

✓ Use the information **currently available** to you to complete this form

✓ Completion of the form is **not to delay** the progress of the matter

### SOURCE of the information

Date & time received	
Name & Organisation	
Professional capacity	<input type="checkbox"/> Hospital medical officer <input type="checkbox"/> Forensic medical officer (police) <input type="checkbox"/> General Practitioner <input type="checkbox"/> Other _____
Address	
Telephone/Fax	
Email	

### Details of the ADULT

Name	
DOB	
Address	
Current circumstances	<i>e.g. adult's accommodation, care needs, support network and health.</i>
Capacity information	<i>include the evidence/source of this information</i>

### Details of the FORENSIC EXAMINATION

What procedure is required	
Reason for the procedure	
Potential side effects/risks:	

### Adult's VIEWS and WISHES

Has procedure been discussed with the adult? If no, why not?	
Adult's understanding of circumstances & proposed procedure?	
Objections expressed by adult?	

### REASON for request

Alleged offence committed against the adult	<input type="checkbox"/> Physical assault <input type="checkbox"/> Sexual assault <input type="checkbox"/> Other _____
Date & time of offence	<i>(if known)</i>
Alleged perpetrator	<i>(their relationship to the adult – if known)</i>

**LEGISLATIVE BASIS for decision** **ver. 2 / July 2014**

(1) Is Public Guardian appointed for the adult?	<input type="checkbox"/> Yes – <u>all</u> personal matters ( <i>this is a guardianship decision – proceed to <b>Best Interests</b> below</i> ) <input type="checkbox"/> Yes – limited guardianship order ( <i>proceed to (2) below</i> ) <input type="checkbox"/> No ( <i>proceed to (2) below</i> ) How was this information ascertained? _____
(2) Is there a private guardian/attorney appointed for the adult?	<input type="checkbox"/> No ( <i>Basis of decision is s.38 PGA – proceed to <b>Best Interests</b> below</i> ) <input type="checkbox"/> Yes ( <i>provide name, type of appointment and a copy of document if possible – continue to (3) below</i> ) How was this information ascertained? _____
(3) If there is a private guardian or attorney appointed:  <i>Refer to s.38(b) PGA</i>  <i>Provide details</i>	<input type="checkbox"/> Are they unavailable to consent? <b>or</b> <input type="checkbox"/> Have they failed to consent? <b>or</b> <input type="checkbox"/> Would the adult’s interests not be adequately protected if the guardian/attorney’s consent was sought?  <i>Basis of decision is s. 38 PGA</i>
<b>Conclusion</b>	<input type="checkbox"/> <i>Decision as guardian</i> <input type="checkbox"/> <i>Decision under s.38 PGA</i>

**BEST INTERESTS of the adult**

Is the examination in the adult’s <u>best interests</u> ?	<input type="checkbox"/> Yes, the examination is to obtain evidence that a criminal offence has been committed against the adult <input type="checkbox"/> No ( <i>Provide details</i> )
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**Other CONSIDERATIONS**

Other issues to be considered to protect adult	<i>e.g. Are the adult’s existing decision-making arrangements appropriate?                  Have immediate steps been taken to prevent further risk of assault?                  Should further decisions be considered (e.g. a contact restriction)?</i>
Proposed course of action	_____

OPG staff member		Position	
<i>Signature &amp; date</i>			
Supervisor/Manager		Position	
<i>Signature &amp; date</i>			

**PUBLIC GUARDIAN’S DECISION:**

<b>Details of discussion with Public Guardian</b>	
<b>Consent provided?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>How will decision be notified?</b>	_____
<b>Signature</b>	_____
<b>Date</b>	_____