

Appendix C: Template guidance resource for applicants

Purpose

The third output of the National project on sterilisation data collection practices is to create a template resource for applicants in special procedure matters that can be customised to each jurisdiction's requirements.

The objectives of the template resource are to:

- assist applicants in understanding decision-making processes and what is required in applications for special procedures (sterilisation)
- ensure boards and tribunals receive the required evidence to make consistent decisions
- enable boards and tribunals to report back against the data indicators to make inter-jurisdictional comparison where possible.

Background

Because of the invasive and irreversible nature of sterilisation, laws in all states and territories provide that, unlike many medical procedures, if a person lacks capacity to understand the nature and effect of sterilisation, the person's substitute decision-maker for medical and dental treatment cannot make a decision about sterilisation.

Resources for applicants in sterilisation matters are made available by some boards and tribunals, however there is a lack of specificity in such resources, with most relating more broadly to consent for medical or dental treatment.

The term 'special procedures' may relate to matters other than sterilisation, including abortion and organ or tissue donation procedures, however, this project and resource relate only to sterilisation matters.

About the resource

Resources for applicants should ensure that applicants are informed about:

- how decisions are made in sterilisation cases
- factors the board or tribunal will consider, and issues it is not authorised to consider
- details of processes specific to sterilisation matters.

The template resource developed for this project was created by the Victorian Office of the Public Advocate and is based on legislation and requirements in Victoria.

It provides examples of what guidance resources for applicants should contain; the principles by which Boards and Tribunals make decisions, the factors Boards and Tribunals consider, and other process information.

The resource will need to be customised, as the different legislation in each jurisdiction will affect the content of resources for applicants, including:

- who can make an application to the Tribunal
- types of procedures requiring court or tribunal authorisation
- factors used to determine whether a sterilisation procedure may be authorised
- ease of access to legal representation and participation in the proceedings

- differences in defining for whom a court or tribunal order is required before that person may access a sterilisation procedure
- whether the board or tribunal has jurisdiction in relation to children, as the project and template resource do not consider the Family Court's jurisdiction.

Terminology

The terminology used in this template resource should be customised according to the terminology used in each jurisdiction.

Person - the person with disability or decision-making impairment to whom the application relates

Applicant - the person making the application

Sterilisation - a surgical intervention that results either directly or indirectly in the termination of an individual's capacity to reproduce

Special procedure - the name of the matter and sterilisation procedure to which the application relates.

Core elements of resources for special procedure applicants

(Text in blue can be customised to the jurisdiction)

What are special procedures?¹

Special procedures include treatments which are intended to, or reasonably likely to, make a person permanently infertile. This is sometimes called sterilisation.

Who can consent to a special procedure?

Most people can make their own decision about a special procedure and can give consent.

If a person with [disability/decision-making impairment](#) cannot understand what the procedure is and what effect it will have, an application to the [Board/Tribunal](#) can be made to provide consent on that person's behalf.

Only the [Board/Tribunal](#) has the power to give consent to a special procedure for a person with a [disability/ decision-making impairment](#) who is incapable of giving consent.

Who can make an application?

An application for consent to a special procedure for a person with [disability/decision-making impairment](#) can be made by either:

- the ['person responsible'](#)² for the person with [disability/decision-making impairment](#)
- any person who, in the opinion of the [Board/Tribunal](#), has a special interest in the person with [disability/decision-making impairment](#)

How will the [Board/Tribunal](#) make a decision on the application?

In making a decision, the [Board/Tribunal](#) will consider:

- the Australian Guardianship and Administration Council's *Protocol for Special Medical Procedures (Sterilisation)* (2009), which can be downloaded at www.agac.org.au.
- the terms of the United Nations *Convention on the Rights of Persons with Disabilities*
- the principles contained in the [Guardianship and Administration Act 1986 \(Vic\)](#).

¹ The title of the procedure/treatment to which the application relates differs across jurisdictions. In Victoria, a special procedure is 'any procedure that is intended, or is reasonably likely, to have the effect of rendering permanently infertile the person on whom it is carried out. In NSW it is special medical treatment.

² Include relevant definition or reference to information about who is a person responsible.

In general these legislative principles are that:

- (a) the means which is the least restrictive of a person's freedom of decision and action as is possible in the circumstances is adopted; and
- (b) the best interests of a person with disability are promoted; and
- (c) the wishes of a person with a disability are wherever possible given effect to.³

What should be included with the application?

- a [Healthcare Professional Report \(HPR\)](#) from the person's treating doctor (available on the [Board/Tribunal's](#) website)
- additional reports as required to be attached to the HPR (for specific sections)
- if required, a separate medical report from a specialist in the relevant area of medicine who is not involved in the person's care, and who has no interest in the outcome of the hearing.

What does the HPR contain?

The HPR requires information about:

- (a) the person's capacity to consent to the proposed procedure
- (b) the person's disability and effect upon decision making
- (c) the reproductive health of the person (including, for females, any difficulties in relation to menstruation),
- (d) the medical needs of the person
- (e) the nature and purpose of the proposed procedure,
- (f) whether the proposed procedure is necessary for the welfare of the person,
- (g) the wishes of the person
- (h) the wishes of other relevant parties, and
- (i) any other tests set down in the legislation of the particular state or territory, such as:
 - (i) why alternative and less invasive procedures would be, or have proven to be, inadequate; and
 - (ii) the likely long term social and psychological effects of the procedure on the person; and
 - (iii) whether scientific or medical advances are reasonably anticipated within the foreseeable future that will make possible either improvement in the person's condition or alternative and less drastic than a medical intervention such as sterilisation.

What information does the [Board/Tribunal](#) require?

The [Board/Tribunal](#) will require information about the person, the person's parents and carers, their social environment, and the person's medical background. The HPR will provide this information, in addition to a completed application form submitted to the [Board/Tribunal](#) by the applicant, which is available on the [Board/Tribunal's](#) website.

An application that does not provide sufficient material may be rejected by the [Board/Tribunal](#) without a hearing, or the [Board/Tribunal](#) may require the applicant to submit further materials before the application will be listed for a hearing.

³ These are the general principles contained in AGAC's protocol. Specific tests for consent apply in each jurisdiction. For example, in NSW the Tribunal must be satisfied that the treatment is necessary to save the person's life or prevent serious damage to their health, before the Tribunal can consent.

Making an application for consent to a special procedure

An applicant must complete and lodge the application for consent to a special procedure (sterilisation) form, which is available on the [Board/Tribunal's](#) website.

To lodge the application form:

- mail the form and attached documents to: [Board/Tribunal's address](#)
- fax the form and any attachments to: XXX
- deliver the form and attachments to: XXX

After making the application⁴

Once the [Board/Tribunal](#) has received all the necessary documents, it will conduct a hearing to decide if consent should be granted.

⁴ The next stage in the process differs in each jurisdiction. Mostly, Tribunals publish general information in other resources regarding the process following submission of an application and can draw from this, or direct to the existing resource.