



# PRESCRIBED MEDICAL TREATMENT

*Guardianship & Administration Act 1993*

# 10

## WHAT IS PRESCRIBED MEDICAL TREATMENT?

Prescribed medical treatment under the *Guardianship and Administration Act 1993* ('the Act') includes sterilisation and termination of pregnancy.

Prescribed medical treatment is different to prescribed *psychiatric* treatment under the *Mental Health Act 2009*. For more information about prescribed psychiatric treatment. [see Information Sheet 16: Prescribed psychiatric treatment](#)

## WHO CAN CONSENT TO PRESCRIBED MEDICAL TREATMENT?

Prescribed medical treatment is a category of medical intervention requiring special consideration. If a person cannot give effective consent because of a mental incapacity, the South Australian Civil and Administrative Tribunal ('the Tribunal') is the only South Australian body that can consent to prescribed treatment on that person's behalf. The person's relative, guardian, enduring guardian or medical agent cannot provide substitute consent. The Family Court of Australia also has authority to provide consent to sterilisation for people under 18 years of age with mental incapacity.

## STERILISATION

Sterilisation is defined (at s61(2) of the Act) as any treatment given to a person that results in, or is likely to result in, the person being infertile. The Tribunal can only consent to sterilisation if it is satisfied that:

- sterilisation is necessary for therapeutic reasons; *or*
- there is no likelihood of the person in the future being able to give effective consent; and
- the person is physically capable of procreation, and is or is likely to be sexually active; and
- there is no alternative suitable method of contraception; *or*
- the person is female and has problems with menstruation and the cessation of her menstrual cycle is the only means of overcoming the problems.

## TERMINATION OF PREGNANCY

Section 61(3) of the Act sets out when the Tribunal can consent to a termination of pregnancy. The Tribunal can only consent to a termination of pregnancy if it is satisfied that:

- it would not constitute a criminal offence to do so; and
- there is no likelihood the woman would acquire the capacity to give effective consent within the period where it is safe to carry out the termination, and
- The Tribunal has no knowledge of the woman informing a medical practitioner (while able to give effect consent) that she refused to consent to the termination.

## Office of the Public Advocate

The Public Advocate is an independent statutory officer accountable to the South Australian Parliament

PO Box 213  
PROSPECT SA 5082

Tel (08) 8342 8200  
Toll Free 1800 066 969  
Fax (08) 8342 8250

Email [opa@agd.sa.gov.au](mailto:opa@agd.sa.gov.au)

Web  
[www.opa.sa.gov.au](http://www.opa.sa.gov.au)

April 2015

## CAN THE TREATMENT BE IMMEDIATELY UNDERTAKEN?

Even if the Tribunal has consented to prescribed medical treatment, the procedure cannot be undertaken until

- the review period for that kind of order has expired (see below) or,
- if an application for review has been made, until that application has been heard and dismissed, or withdrawn.

## REVIEWS AND APPEALS OF PRESCRIBED MEDICAL TREATMENT DECISIONS

**REVIEWS** If a person disagrees with the Tribunal's decision they can apply to the Tribunal for a review of that decision. The review will be undertaken by senior members of the Tribunal who were not involved in the original decision. The review will be a fresh look at the decision, using the information provided when the order was made and any other relevant information accepted by the Tribunal.

There are strict time frames to request review of prescribed medical treatment decisions.

- An application for review of the Tribunal's decision to terminate a pregnancy must be made within two (2) business days of the decision.
- An application for review of the Tribunal's sterilisation decision must be made within one month of the decision.

Anyone with a proper interest in the matter can request a review, including the person to whom the proceedings relate, the person who made the application, and any person who gave evidence at the Tribunal hearing.

**APPEALS** If a person is dissatisfied with the outcome of a review of a *sterilisation* decision by senior members of the Tribunal they can seek leave to appeal the decision to the Supreme Court. The appeal must be made within 14 days of the Tribunal's decision on review, or within 14 days of being provided with reasons for that decision. There are costs involved in an appeal to the Supreme Court. There is no right of appeal to the Supreme Court for a *termination of pregnancy* decision.