

Less Restrictive Way (section 13 Mental Health Act 2016) Decision Making for Child and Youth Mental Health Treatment and Care

To be read in conjunction with the *Guide to Informed Decision-making in Health Care*

Evidence of capacity for patients to consent to treatment must be established. If evidence of the patient's capacity to consent is not able to be established, the less restrictive way for consent to health care should be sought.

If the child or young person requires mental health treatment, complete a formal assessment of capacity (Gillick competence)

In addition, consider a review of the patient's capacity where:

- the nature of the treatment has changed, or the risk has increased/severity of symptoms increased, such that the existing consent may not be adequate; or
- the nature of the treatment has changed, or the risk has lowered/illness has improved, such that the existing decision making may not be the less restrictive option.

Clearly document the assessment and reasons.

Does the child/young person demonstrate capacity to consent to mental health treatment?

'Capacity' is defined in section 14 of the *Mental Health Act 2016* (i.e. have the maturity and understanding to make such an important decision)

Yes

No

WHAT IF THERE IS A RISK TO SELF OR OTHERS?

- Formally assess and document capacity.
- Undertake thorough risk assessment to inform planning.
- Follow local protocols and pathways, e.g. suicide prevention pathway.
- Discuss all options with the child/young person and family/carers to come to an agreed approach. Options may include inpatient care.
- Consider seeking a second opinion if capacity assessment is not clear.

Provide treatment and care as a voluntary patient

Document the consent and that the patient is the decision maker.

Encourage involvement of family/carers as much as possible and as appropriate.

Provide treatment and care with the consent of a parent or legal guardian

Document the consent and the identity of the decision maker.*

Encourage involvement of the patient in decision making as much as possible and as appropriate.

Is there a parent or legal guardian able or available who can provide consent? *

Yes

No

What if there is a dispute?

If there is a dispute between decision makers and/or the treating team, or concern about the child's or young person's best interests, local resolutions should be sought. Include the IPRA.

If local resolution is unfeasible, seek legal advice as soon as possible to ensure care is not compromised (court orders for treatment may be sought in exceptional circumstances).

OPTIONS:

- If the treatment criteria apply – use treatment authority to treat under *MHA2016*
- If child protection concerns exist, report to Child Safety. Based on the outcome, review the less restrictive option.

Considerations:

- Timeframes for applications and decision vs level of risk
- Use less restrictive ways to consent to treatment when these become available or applicable.
- Regularly reviewing capacity assessment
- Respect views, wishes and preferences

Consider all options for support and care in the less restrictive way.

Ensure that collaborative planning and review occurs and plans have updated goals and actions to enhance protective factors, strengths and support, including:

- Care plan, Safety plan, Recovery plan
- Any communication plans, e.g. with schools or other services

*Check and verify proof of legal guardianship, particularly if there is a court order in place (e.g. child protection order or family law court order). Ensure the proof is documented and a copy entered in person's record.

For Aboriginal and Torres Strait Islander people who are in the traditional role of a parent, refer to section 61F of the Family Law Act 1975. Ask for help from the local Aboriginal and Torres Strait Islander Mental Health Worker to assist with identifying kinship.