

family

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Abstract

This brochure was produced for doctors to provide them with information they should read if they are asked to perform a sterilisation on a person with an intellectual disability. **Keyword: Legal**

Assessing the capacity to consent

- Basically, a person with an intellectual disability will require similar information to any other person seeking sterilisation, although you may need to repeat the information several times. A person with an intellectual disability may wish to have another person with them during the consultation who can go over the information with them later.
- You need to ensure that neither this person nor any other is unduly influencing the decision of the person with an intellectual disability, and that any consent is given freely. This may mean that you only provide information when the support person is present, and later discuss the options with the person with an intellectual disability alone.
- Language should be clear and simple and not too technical, as should any drawings or diagrams used. Make it clear when you are describing the operation and its outcomes that the descriptions apply to your patient, not to some other person.
- To gauge whether the person understands the information and options you have presented to them, ask them questions about the information or their feelings. If you are not sure whether the person understands and consents contact the Guardianship Board.
- If you require further information about contraception, menstruation and related issues, contact the Family Planning Association.
- If you require further information about the law as it relates to people with an intellectual disability, contact the Guardianship Board or the Intellectual Disability Rights Service at Redfern Legal Centre.

- There is a booklet about sterilisation designed for women with an intellectual disability. It is titled *What is sterilisation* and is available through the Family Planning Association of NSW.



For more information:

Family Planning Association
328-336 Liverpool Road
Ashfield NSW 2131
Phone: (02) 716 6566 or 716 6099

Guardianship Board
2A Rowntree Street
Balmain NSW 2041
Phone (02) 552 8555
Toll free: (008) 46 3928

Intellectual Disability Rights Service
Redfern Legal Centre
73 Pitt Street
Redfern NSW 2016
Phone (02) 698 7277

Consent to Sterilisation

a brochure for doctors

This information is for doctors who are asked to perform a sterilisation on a person with an intellectual disability.

It outlines the legislation which relates to this procedure, and makes some suggestions for determining whether valid consent to proposed treatment has been given.

The NSW Disability Services and Guardianship Act 1987

- Until this legislation was enacted, there was no clear and legally endorsed procedure for people with a disability who were unable to manage certain aspects of their lives and who needed assistance to make decisions.
- Doctors, carers and parents were faced with the dilemma of what to do when an adult lacked sufficient understanding to consent to medical or other treatment. To treat without consent may have led to allegations of assault; not to treat to allegations of negligence. Further, there was no accessible mechanism to resolve disputes between parents, carers and the person with a disability about the most appropriate form of treatment.

Consent to medical treatment

- Part 5 of the Disability Services and Guardianship Act identifies who can give consent to medical or dental treatment for any person over the age of 16 whose disability prevents them giving a valid consent. This provides a safeguard for doctors and other providers of health care.
- The provisions in the Act are designed to ensure that people are not deprived of treatment because they lack the capacity to consent, and that any treatment carried out is in the best interests of the health and well-being of the individual.
- Of course a doctor can still treat without consent where it is necessary as a matter of urgency to save the person's life or to prevent serious damage to their health.

- The Act does not apply if the person with a disability can make their own decisions.
 - The Disability Services and Guardianship Act divides medical treatments into three categories:
 - special medical treatments
 - major medical treatments
 - minor medical treatments.
- Further, it identifies particular people or agencies who can consent on a patient's behalf.

Sterilisation: The legal position

- Any treatment which results in the sterilisation of a person with a disability (including tubal ligation, hysterectomy and vasectomy) has been categorised as special medical treatment.
- This means that where an adult patient is unable to give a valid consent, the Guardianship Board is the only body which can consent on their behalf. The Act allows the Board to consent only where the procedure is necessary in order to save the patient's life or prevent serious damage to the person's health. Any medical practitioner who proceeds with a special medical treatment without the consent of the Guardianship Board is committing an offence under the Act.
- Where the person is under 16 years of age, the NSW Children (Care and Protection) Act 1987 says that the permission of the Supreme Court of New South Wales must be obtained. For a sterilisation procedure parental consent is not enough.

The capacity to consent

- The person's capacity to consent should be considered in relation to the particular treatment proposed. Many people with an intellectual disability will be able to give or withhold a valid consent to a sterilisation procedure on their own behalf.
- To give a valid consent the patient must understand the nature and effect of the treatment, i.e. what is to be done and what this will mean. They must also understand that they are free to consent to or refuse the treatment.
- Additional requirements arise from the law of negligence. A doctor who is proposing to perform a sterilisation must do their best to ensure the patient understands:
 - risks of the procedure
 - alternatives to the procedure
 - the factors relevant to whether the person should be permanently ruling out having children.
- If a person cannot comprehend this additional information, despite the doctor's best endeavours, the procedure can still go ahead, providing the patient understands the nature and effect of the procedure and that they can say 'no'.

