

Mental Health Act 2016

Chief Psychiatrist Policy

Electroconvulsive therapy

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General

Electroconvulsive therapy (ECT) is a 'regulated treatment' under the *Mental Health Act 2016* (the Act). ECT is an evidence-based treatment for certain severe psychiatric disorders. It can also be used as a maintenance treatment for certain severe psychiatric disorders.

This policy sets out the regulatory requirements for the approval and performance of ECT to ensure appropriate safeguards are in place.

Queensland Health's guideline '*The administration of electroconvulsive therapy*' outlines a consistent, evidence-informed approach to the administration of ECT.

Scope

This policy is mandatory for all authorised mental health services (AMHSs). An authorised doctor, authorised mental health practitioner, AMHS administrator, or other person performing a function or exercising a power under the Act **must** comply with this policy.

This policy **must** be read in conjunction with the relevant provisions of the Act.

Staff should work collaboratively and in partnership with individuals in their care to ensure their unique age-related, cultural and spiritual, gender-related, religious and communication needs are recognised, respected and followed to the greatest extent practicable. This should include the timely involvement of appropriate local supports and a recovery-oriented focus.

This policy **must** be implemented in a way that is consistent with the objects and principles of the Act.

This policy is issued under section 305 of the *Mental Health Act 2016*

Dr John Reilly
Chief Psychiatrist, Queensland Health

Policy

1 Application of ECT provisions

ECT may only be performed in the following circumstances:

- for a person who is an adult–
 - with the approval of the Mental Health Review Tribunal (MHRT) if they're:
 - unable to give informed consent whether or not they are subject to a Treatment Authority, Forensic Order or Treatment Support Order, or
 - subject to a Treatment Authority, Forensic Order or Treatment Support Order
 - otherwise–with the informed consent of the adult
- for a person who is a minor–with the approval of the MHRT, or
- for certain involuntary patients in emergency circumstances (see section 4).

ECT may only be performed in an AMHS.

It is an offence to perform ECT other than in accordance with the Act.

Queensland Health's guideline *'The administration of electroconvulsive therapy'* outlines a consistent, evidence-informed approach to the administration of ECT.

2 Performance of ECT with consent

ECT may be performed with the informed consent of an adult patient.

Informed consent for ECT is given by a person only if all of the following apply:

- the person has capacity to give consent to the treatment, meaning they have the ability to–
 - understand the nature and effect of a decision relating to the treatment
 - freely and voluntarily make the decision, and
 - communicate the decision
- the consent is in writing, signed by the person.

An adult can also give informed consent in an advance health directive (AHD) (see 2.1.3 Advance health directives).

Patients subject to involuntary treatment under the Act who have provided informed consent (including consent in an AHD) **must** still have an application for ECT made to the MHRT by a doctor (see section 2.1.1 Patients subject to involuntary treatment under the Act).

A minor, or their parent or guardian, **cannot give consent** to undertake ECT.

2.1 Requirements for obtaining informed consent

The Act requires that before informed consent can be provided, the doctor proposing the treatment **must** give the person a full explanation, in a form and language able to be understood by the person, about:

- the purpose, method, likely duration and expected benefit of the treatment, and
- possible pain, discomfort, risks and side effects associated with the treatment, and
- alternative methods of treatment available to the person, and
- the consequences of not receiving treatment.

Informed consent **must be documented** on the *Consent Agreement for Electroconvulsive Therapy* form. Once completed, the Agreement must be uploaded on the person's clinical record in CIMHA.

2.1.1 Patients subject to involuntary treatment under the Act

In making a Treatment Authority, an authorised doctor has determined that a person does not have capacity to consent to treatment for their mental illness. However, under the Act, a person's lack of capacity to consent to treatment for their mental illness does not automatically apply to regulated treatments, including ECT.

Likewise, a person being made subject to a Forensic Order or Treatment Support Order by the Mental Health Court or the MHRT does not automatically mean that the person does not have capacity to give informed consent to ECT.

The Act requires that for patients subject to a Treatment Authority, Forensic Order or Treatment Support Order, an assessment of the person's capacity to give informed consent to ECT **must** occur.

If a doctor proposes to perform ECT for a patient who is a minor and subject to a Treatment Authority, Forensic Order or Treatment Support Order, then the doctor **must** apply to the MHRT for approval to perform ECT.

If a doctor proposes to perform ECT for an adult patient subject to a Treatment Authority, Forensic Order or Treatment Support Order and the patient–

- has capacity to give informed consent and gives consent, then the doctor **must** still apply to the MHRT for approval to perform ECT. This includes if the patient provides consent in an AHD (see section 2.1.2 Advance health directives).
- has capacity to give informed consent at the time and refuses to give consent, ECT cannot be performed. This does not preclude an application being made to the MHRT and emergency ECT being provided if the criteria are met (refer section 4 of this policy).
- does not have capacity to give informed consent at the time but has given a direction in an AHD refusing ECT, the doctor may consider applying to the MHRT for approval to perform ECT, if the doctor is not satisfied the AHD can be relied upon in the circumstances or the AHD appears to be invalid or not clear (see 2.1.3 Advance health directives).
- does not have capacity to give informed consent (or it is not clear that they have capacity), then the doctor **must** apply to the MHRT for approval to perform ECT.

The doctor may consider obtaining a second opinion from another psychiatrist if it is not clear whether a person has capacity to provide informed consent. If a second opinion was obtained, it must accompany any application to the MHRT.

The application to the MHRT for involuntary patients allows for the assessment of the person's capacity to give informed consent to be confirmed by the MHRT in recognition of the potential vulnerabilities that an involuntary patient may have in relation to providing consent for ECT.

Approval for ECT may not be given if the MHRT confirms the person has capacity to refuse to give informed consent to the ECT. See section 5 of this policy for further information.

2.1.2 Patients receiving voluntary treatment

If a doctor proposes to perform ECT for a voluntary patient (adult) and the patient–

- does not have capacity to give informed consent (or it is not clear that they have capacity), then the doctor **must** apply to the MHRT for approval to perform ECT.
- has capacity to give informed consent and gives consent (including consent provided in an AHD), ECT can be performed without requiring MHRT approval.
- does not have capacity to give informed consent at the time but has given a direction in an AHD refusing ECT, the doctor may consider applying to the MHRT for approval to perform ECT, if the doctor is not satisfied the AHD can be relied upon in the circumstances or the AHD appears to be invalid or not clear (see 2.1.3 Advance health directives).

- has capacity to give informed consent at the time and refuses to give consent, ECT cannot be performed.

The doctor may consider obtaining a second opinion from another psychiatrist if it is not clear whether a person has capacity to provide informed consent. If a second opinion was obtained, it must accompany any application to the MHRT.

2.1.3 Advance health directives

The Act states that informed consent for ECT can be provided in an AHD.

A person's capacity to provide informed consent for ECT at the time should be assessed in the first instance before consideration of consent provided in an AHD.

Where a person does not have the capacity to provide informed consent for ECT at the time and a valid AHD gives informed consent for ECT–

- If the person is an involuntary patient (that is, a person subject to a Treatment Authority, Forensic Order or Treatment Support Order), the doctor **must** still apply to the MHRT for approval to perform ECT to confirm if the AHD can be relied upon in the circumstances.
- If the person is a voluntary patient, the doctor **may** still apply to the MHRT for approval to perform ECT if:
 - not satisfied the AHD can be relied upon in the circumstances, or
 - the AHD appears to be invalid or not clear.

The MHRT in making their decisions **must** have regard to the directions given by the person in the AHD.

The doctor **must** inform the MHRT of the direction provided for in the person's AHD.

The *Guardianship and Administration Act 2000* establishes ECT as 'special health care'. Consent for ECT **cannot** be given by a substitute decision maker or the Queensland Civil and Administrative Tribunal (QCAT).

3 Performance of ECT with MHRT approval

Prior to a doctor making an application to the MHRT, a psychiatrist must prescribe ECT, having regard to the person's clinical condition, treatment history and any known views, wishes and preferences that the person may have, or have had in the past, in relation to ECT.

When making a decision about appropriateness of ECT, the patient's support person/s (see definitions) should be contacted to discuss any known views, wishes and preferences that they may have had in the past in relation to ECT.

It is recommended that a second opinion from another psychiatrist be obtained to inform the doctor's decision about applying for ECT. If obtained, the second opinion **must** accompany any application to the MHRT.

3.1 Making treatment applications to the MHRT

The doctor must complete the *Regulated treatment Application - ECT* form when making an application to the MHRT. The application form is available as a clinical note in CIMHA.

The doctor must then provide this form to the administrator of the AMHS. The administrator must forward the application to the MHRT without delay, including any relevant attachments (for example, second opinion, AHD, signed consent form).

The doctor making the application **must**, to the extent practicable, tell the person that the application has been made and explain the application to them. The application **must** also be explained to the person's support person/s.

An application for ECT **must** be heard by the MHRT within **fourteen (14) days** of receiving the *Regulated treatment Application - ECT* form.

The MHRT requires this form at least **seven (7) days** before a scheduled hearing date.

On receipt of the application, the MHRT **must** notify the following people of the hearing date:

- the person subject to the application,
- the doctor who made the application, and
- the administrator of the treating AMHS.

4 Performance of ECT in an emergency

ECT may be performed in an emergency for a relevant patient. A relevant patient is a person:

- subject to a Treatment Authority, Forensic Order or Treatment Support Order, or
- absent without permission from an interstate mental health service and detained in an AMHS.

The performance of ECT in an emergency can only occur if:

- a doctor for an AMHS and the senior medical administrator of the relevant patient's treating health service have certified in writing (using the *Certificate to Perform Emergency ECT* form) that performing ECT is necessary to:
 - save the patient's life, or
 - prevent the patient from suffering irreparable harm, and
- an application has been made to the MHRT (see section 3.1 Making treatment applications to the MHRT) but is not yet decided.

The *Certificate to Perform Emergency ECT* form must be completed electronically in CIMHA or, if this is not practicable, completed in hard copy and uploaded to CIMHA.

A *Certificate to Perform Emergency ECT* form is in force for the period:

- starting on the day the application to the MHRT was made, and
- ending on the day the application is determined by the MHRT.

If a *Certificate to Perform Emergency ECT* form is made, the MHRT must hear the application as soon as practicable.

An application to the MHRT may be made before, or at the time of, the *Certificate to Perform Emergency ECT* being made.

- There may be clinical circumstances where the *Certificate to Perform Emergency ECT* is completed after an application to the MHRT has already been made.

The doctor must immediately provide the document/s to the AMHS administrator.

The AMHS administrator must immediately forward the document/s to the MHRT.

The doctor making the *Certificate to Perform Emergency ECT* must, to the extent practicable:

- tell the patient the Certificate has been made, and
- explain the Certificate to the patient.

The Certificate must also be explained to the relevant patient's support person/s.

The clinical rationale for the emergency performance of ECT must be provided on the *Certificate to Perform Emergency ECT* form and documented in a clinical note.

Particular attention should be given to documenting the rationale and modified treatment plan in circumstances where a *Certificate to Perform Emergency ECT* is made after a *Regulated treatment Application – ECT* form was lodged with the MHRT.

5 MHRT decisions for treatment applications

The MHRT **cannot** approve an application to perform ECT unless satisfied–

- If the person is an adult and unable to give informed consent (as a voluntary or involuntary patient), that all of the following apply:
 - performing ECT has clinical merit and is appropriate in the circumstances
 - evidence supports the effectiveness of ECT for the person's particular mental illness
 - if ECT has previously been performed on the person – of the effectiveness of ECT for the person.
- If the person is an adult and gave informed consent (as an involuntary patient), that all of the following apply:
 - the doctor applying for ECT has given the person the explanation required under the Act (see section 2.1 of this policy)
 - the person has given informed consent to ECT.
- If the person is a minor, that all of the following apply:
 - performing ECT has clinical merit and is appropriate in the circumstances
 - evidence supports the effectiveness of ECT for the minor's particular mental illness and persons of the minor's age
 - if ECT has previously been performed on the minor–of the effectiveness of ECT for the minor
 - performing ECT on the minor is in the minor's best interests.

In deciding a treatment application, the MHRT **must** have regard to–

- if the application relates to an adult:
 - whether the person is able to give informed consent to the therapy, and
 - to the greatest extent practicable, any views, wishes and preferences the adult has expressed about the therapy, whether in an AHD or otherwise.
- if the application relates to a minor:
 - the views of the minor's parents, and
 - the views, wishes and preferences of the minor.

If the MHRT decides to approve the treatment application, its decision must state the number of treatments that may be performed in a stated period under the approval, and any conditions the MHRT considers appropriate.

The MHRT **must** notify the following people of their decision within **seven (7) days** of the hearing:

- the person the subject of the application
- the doctor who made the application, and
- the administrator of the treating AMHS.

In giving its decision, the MHRT **must** provide information about entitlements to seek reasons for the MHRT decision and to appeal the decision to the Mental Health Court.

5.1 Legal representation and support

The MHRT **must** appoint legal representation for the person subject to an application for ECT at no cost for all hearings where a treatment application is being considered.

The MHRT website provides further information regarding the process of appointing legal representation.

The person subject to an application for ECT may also be accompanied at the MHRT hearing by a support person. Support person includes an appointed Nominated Support Person or a family member, carer or other support person. With the MHRT's approval, more than one support person may attend the hearing.

Further information

Definitions and abbreviations

Term	Definition
AMHS	Authorised mental health service– Part of a public or private sector health service declared by the Chief Psychiatrist for providing treatment and care to patients under the <i>Mental Health Act 2016</i>
CIMHA	Consumer Integrated Mental Health and Addiction application– The statewide mental health database which is the designated patient record for the purposes of the <i>Mental Health Act 2016</i>
ECT	Electroconvulsive therapy
Nominated support person	A family member, carer or other support person formally appointed by a patient to be their nominated support person An appointed nominated support person's rights include: <ul style="list-style-type: none">• must be given all notices about the patient that are required under the Act• may discuss confidential information about the patient's treatment and care• may represent, or support the patient, in any MHRT hearings, and• may request a psychiatrist report if the patient is charged with a serious offence
Patient	An involuntary patient, or a person receiving treatment and care for a mental illness in an AMHS, other than as an involuntary patient, including a person receiving treatment and care under an AHD or with the consent of a personal guardian or attorney
Support person	An appointed Nominated Support Person, family member, carer, or other support person (including an attorney or guardian)

Referenced policies and resources

Mental Health Act 2016 forms and other resources

- Guideline: [The administration of electroconvulsive therapy](#)
- Form: [Certificate to perform emergency electroconvulsive therapy \(ECT\)](#)
- Form: [Electroconvulsive therapy \(ECT\) consent](#)
- Form: [Regulated treatment application for electroconvulsive therapy \(ECT\)](#)
- [Mental Health Review Tribunal website](#)

Legislation

- Guardianship and Administration Act 2000
- Mental Health Act 2016

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Attachment 1: Mapping out ECT for adult voluntary patients

An authorised doctor is proposing ECT for a voluntary patient (adults only)

You can perform ECT for a voluntary patient (without requiring MHRT approval) if the patient gives informed consent to ECT.

Check if the voluntary patient currently has capacity to give informed consent to ECT

The voluntary patient has capacity to give informed consent if they can:

- understand the nature and effect of the decision relating to the treatment; and
- freely and voluntarily make the decision; and
- communicate the decision.

A patient can also give informed consent to ECT in an AHD, which can only be relied on if the patient doesn't have capacity at the time.

Consent for ECT cannot be given by a substitute decision maker or the Queensland Civil and Administrative Tribunal (QCAT).

NOTE: If it is not clear if the person has capacity to give informed consent to ECT the doctor may consider obtaining a second opinion from another psychiatrist. For example:

- to confirm the person's current capacity to provide informed consent
- it is suspected the person may not have had capacity when they made an AHD, or
- their AHD appears to be invalid or not clear

The voluntary patient **has** capacity to give informed consent now, or otherwise at the time they made an AHD (with valid and clear directions)

Give a full explanation before seeking informed consent (see sections 233–234 of the *Mental Health Act 2016*)

Before a patient gives informed consent, the doctor proposing ECT must give a full explanation to the patient about:

- the purpose, method, likely duration and expected benefit of the treatment; and
- possible pain, discomfort, risks and side effects associated with the treatment; and
- alternative methods of treatment available to the person; and
- the consequences of not receiving treatment.

As far as possible when preparing an AHD, the voluntary patient's directions should reflect the above.

The voluntary patient **gives** informed consent (including in an AHD)

ECT can be performed (and MHRT approval is not required)

You need to document consent by the voluntary patient (or via an AHD) in the *Consent agreement for ECT* form.

You should also document your capacity assessment.

Remember, you don't need to subsequently make a treatment authority to perform ECT for the voluntary patient.

The voluntary patient **refuses to give** informed consent

If the voluntary patient has capacity to give informed consent at the time and refuses to give consent, ECT cannot be performed.

Remember to document your capacity assessment (and that the patient refused to give consent).

If the voluntary patient does not have capacity to give informed consent at the time but has made a direction in an AHD which refuses to give consent to ECT, the doctor may consider applying to the MHRT for approval to perform ECT, if the doctor is not satisfied the AHD can be relied upon in the circumstances or the AHD appears to be invalid or not clear.

The voluntary patient **does not have** capacity to give informed consent (including via an AHD)

The authorised doctor must apply to the MHRT for approval to perform ECT

An application for ECT must explain why ECT has clinical merit and is appropriate in the circumstances (as well as various other considerations in the MHRT's *Regulated treatment application for ECT form*).

If a second opinion was obtained about the person's capacity to provide informed consent, it must accompany any application to the MHRT.

The doctor must take into account the patient's views, wishes and preferences in an AHD before making an application to the MHRT.

In deciding whether or not to approve ECT, the MHRT must consider any views, wishes and preferences of the patient.

If applicable, the MHRT may also consider whether the patient had capacity to give informed consent at the time they made an AHD.

Remember, each application to the MHRT is unique and determined on a case-by-case basis.

As soon as practicable after applying for approval, the doctor must:

- tell the patient the application has been made; and
- explain the application to the patient.

Attachment 2: Mapping out ECT for adult involuntary patients

An authorised doctor is proposing ECT for an involuntary patient, this is someone subject to a treatment authority, forensic order or treatment support order (adults only)

Whilst an involuntary patient can give informed consent to ECT, you will still require MHRT approval to perform ECT.

Check if the involuntary patient currently has capacity to give informed consent to ECT

The involuntary patient has capacity to give informed consent if they can:

- understand the nature and effect of the decision relating to the treatment; and
- freely and voluntarily make the decision; and
- communicate the decision.

A patient can also give informed consent to ECT in an AHD, which can only be relied on if the patient doesn't have capacity at the time.

Consent for ECT cannot be given by a substitute decision maker or the Queensland Civil and Administrative Tribunal (QCAT).

NOTE: If it is not clear if the person has capacity to give informed consent to ECT the doctor may consider obtaining a second opinion from another psychiatrist. For example:

- to confirm the person's current capacity to provide informed consent
- it is suspected the person may not have had capacity when they made an AHD, or
- their AHD appears to be invalid or not clear

The involuntary patient **has** capacity to give informed consent now, or otherwise at the time they made an AHD (with valid and clear directions)

Give a full explanation before seeking informed consent (see sections 233–234 of the *Mental Health Act 2016*)

Before a patient gives informed consent, the doctor proposing ECT must give a full explanation to the patient about:

- the purpose, method, likely duration and expected benefit of the treatment; and
- possible pain, discomfort, risks and side effects associated with the treatment; and
- alternative methods of treatment available to the person; and
- the consequences of not receiving treatment.

As far as possible when preparing an AHD, the involuntary patient's directions should reflect the above.

The involuntary patient **gives** informed consent (including in an AHD)

The doctor must still apply to the MHRT for approval to perform ECT

You need to document consent by the involuntary patient (or via an AHD) in both the *Consent agreement for ECT form*; and MHRT's *Regulated treatment application for ECT form*.

The MHRT may give approval if satisfied the doctor gave the full explanation (noted above) at the time the patient gave informed consent, including when the person made the direction for ECT in an AHD.

Remember, each application to the MHRT is unique and determined on a case-by-case basis.

As soon as practicable after applying for approval, the doctor must:

- tell the patient the application has been made; and
- explain the application to the patient.

The involuntary patient **refuses to give** informed consent

If the involuntary patient has capacity to give informed consent at the time and refuses to give consent, ECT cannot be performed.

Remember to document your capacity assessment (and that the patient refused to give consent).

This does not preclude an application being made to the MHRT or emergency ECT being provided if the criteria are met.

If the voluntary patient does not have capacity to give informed consent at the time but has made a direction in an AHD which refuses to give consent to ECT, the doctor may consider applying to the MHRT for approval to perform ECT, if the doctor is not satisfied the AHD can be relied upon in the circumstances or the AHD appears to be invalid or not clear.

The involuntary patient **does not have** capacity to give informed consent (including via an AHD)

The authorised doctor must apply to the MHRT for approval to perform ECT

An application for ECT must explain why ECT has clinical merit and is appropriate in the circumstances (as well as various other considerations in the MHRT's *Regulated treatment application for ECT form*).

If a second opinion was obtained about the person's capacity to provide informed consent, it must accompany any application to the MHRT.

The doctor must take into account the patient's views, wishes and preferences in an AHD before making an application to the MHRT.

In deciding whether or not to approve ECT, the MHRT must consider any views, wishes and preferences of the patient, whether in an AHD or otherwise.

If applicable, the MHRT may also consider whether the patient had capacity to give informed consent at the time they made an AHD.

Remember, each application to the MHRT is unique and determined on a case-by-case basis.

As soon as practicable after applying for approval, the doctor must:

- tell the patient the application has been made; and
- explain the application to the patient.