

# Chief Psychiatrist Practice Guidelines

## Child and Youth: Treatment and Care of Minors

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## Overview

These Practice Guidelines:

- set out information and procedures for authorised mental health services (AMHS) regarding the treatment and care of minors under the *Mental Health Act 2016* (MHA 2016)
- are mandatory for all AMHS staff exercising a power or function under the MHA 2016, and
- are to be read in conjunction with the relevant provisions of the MHA 2016 and the *Queensland Health Guide to Informed Decision-making in Health Care* in relation to informed decision-making and consent for children and young people.

## Key information

The MHA 2016 recognises and promotes the best interests of minors receiving mental health treatment and care.

Minors should have their specific needs, wellbeing and safety needs recognised and protected, including by receiving treatment and care separately from adults if possible.

The Public Guardian must be notified of the admission of a minor to a mental health inpatient unit that is not a child and adolescent inpatient unit.

## Definitions

*Child and adolescent unit* – means an inpatient mental health unit of an AMHS that provides treatment and care only to minors or young adults.

*Inpatient mental health unit* – means the part of an AMHS to which patients are admitted for treatment and care, and discharged on a day other than the day of admission.

*Minor* – means an individual who is under 18.

*Parent* – includes:

- a guardian of the minor
- a person who exercises parental responsibility for the minor, other than on a temporary basis
- for minor of Aboriginal background, a person who, under Aboriginal tradition, is regarded as a parent of the minor, and
- for a minor of Torres Strait Islander background, a person who, under Island custom, is regarded as a parent of the minor.

## Guidelines

- These guidelines consolidate and provide additional information relevant to the treatment and care of minors under the MHA 2016. They should be read together

with the relevant *Chief Psychiatrist Policies and Practice Guidelines* (listed in the resources section of this guideline).

## 1 Treatment criteria and less restrictive way

- The application of the treatment criteria and the assessment of capacity of minors to consent to being treated is guided by the *Chief Psychiatrist Policy: Treatment Criteria and Assessment of Capacity*, the *Chief Psychiatrist Policy: Advance Health Directives and 'Less Restrictive Way' of Treatment*, and the *Queensland Health Guide to Informed Decision-making in Healthcare*.
- In relation to a minor, treatment under a less restrictive way includes circumstances where a parent provides consent for the treatment.
- This means that a **Recommendation for Assessment** may only be made, after an examination of a minor, if it is likely that the minor would not be able to receive treatment or care with the consent of a parent.
- Providing treatment with the consent of a parent should apply as far as possible. The authorised doctor must make reasonable efforts to discuss the minor's treatment and care needs and, where clinically appropriate, seek consent from the parent.
- However, the authorised doctor's primary consideration is to ensure the minor receives appropriate clinical care. There may be circumstances where the treatment and care needs cannot be appropriately met by seeking the parent's consent.
- 'Reasonable efforts' will take account of the clinical circumstances including, for example, urgency and any risks associated with delaying treatment. If timely contact with a parent is not possible, the contact should be made at the earliest possible time.
- In seeking consent, the authorised doctor should be satisfied that the person providing consent is a parent as defined in the MHA 2016.
- The authorised doctor must provide all of the information required to enable the parent to make an informed decision.
- If consent is given, the consent authorises the actions necessary to provide treatment and care including the use of force that is necessary and reasonable in the circumstances. However, if the person needs to be detained as an inpatient for treatment, explicit consent for the detention is required.
- A parent **cannot** consent to the minor being secluded, mechanically restrained or to the administration of electroconvulsive therapy (ECT).
- If consent has been sought from a parent and the parent decides not to give consent, the reasons for the decision must be taken into account. However, the authorised doctor may make a **Treatment Authority** if the doctor considers treatment is necessary and in the person's best interests.

## 1.1 Capacity

- In relation to capacity to consent to be treated for a mental illness, the MHA 2016 does not affect common law provisions relating to:
  - the capacity of a minor to consent to treatment, or
  - in relation to a parent consenting to treatment of a minor.
- Unlike adults, a minor is presumed not to have capacity to give their own consent, unless there is sufficient evidence (e.g. an assessment of capacity by a clinician) they have such capacity to consent. This is referred to as ‘Gillick competence’<sup>1</sup>.
- Part 3 of the *Queensland Health Guide to Informed Decision-making in Healthcare* provides information about decision-making and consent for minors. The following considerations are relevant for determining whether a minor has capacity to consent to treatment for a mental illness:
  - the age, attitude and maturity of the child or young person, including their physical and emotional development
  - the child or young person’s level of intelligence and education
  - the child or young person’s social circumstances and social history
  - the nature of the child or young person’s condition
  - the complexity of the proposed health care, including the need for follow-up or supervision after the healthcare
  - the seriousness of the risks associated with the healthcare
  - the consequences if the child or young person does not have the health care.
- The more complex the treatment or serious the consequences, the stronger the evidence of the minor’s capacity to consent to the specific treatment will need to be.
- A minor is not able to make an Enduring Power of Attorney or an Advanced Health Directive.

## 2 Notifications

- The MHA 2016 makes specific requirements regarding notifications when the patient is a minor.

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<sup>1</sup> ‘Gillick competence’ – the child possess “a sufficient understanding and intelligence to enable him or her to understand fully what is proposed” (Gillick v West Norfolk and Wisbech Area Health Authority [1986] AC 112). This legal principal was approved by the High Court of Australia in Secretary, Department of Health and Community Services (NT) v JWB and SMB (Marion’s case) (1992) 175 CLR 218.

## 2.1 General

- Any written notice that may be provided to a minor, may also be provided to one or more of the patient's parents, in addition to, or instead of the information being provided to the minor if:
  - the minor may not understand or benefit from receiving the notice; and
  - giving the notice to the parent appears to be in the minor's best interest.
- When determining whether giving notice to a parent is in the minor's best interest, the views and wishes of the minor should be taken into account.
- Additionally, where an oral explanation or discussion is required to be had with a patient who is a minor (for example prior to accessing community leave), the explanation may also be provided to the minor's parent/s. However this requirement does not apply if:
  - the minor requests, at a time when they have capacity, that the communication not take place
  - the parent is not willing or readily available for this to occur, or
  - the communication with the person is likely to be detrimental to the minor's health and wellbeing.

## 2.2 Notifications to the Public Guardian

- The MHA 2016 requires the Public Guardian to be notified about:
  - the admission of a minor to a high security unit or an inpatient mental health unit of an AMHS other than a child and adolescent inpatient unit, and
  - the use of mechanical restraint, seclusion or physical restraint in an AMHS on a patient who is a minor.

### 2.2.1 Admission of minor to high security unit or inpatient mental health unit other than child and adolescent inpatient unit

- The Administrator of an AMHS is responsible for ensuring the Office of the Public Guardian receives timely notification of a minor's admission to a high security unit or an inpatient unit of an AMHS other than a child and adolescent inpatient unit.
- The purpose of the notification is to enable the Officer of the Public Guardian to consider the need for the involvement of a Community Visitor.
- Notice is to be given as soon as practicable but must be provided within 72 hours after the minor's admission.
- Notice is provided via email to [OPGvisitingpractice@publicguardian.qld.gov.au](mailto:OPGvisitingpractice@publicguardian.qld.gov.au) and is to include:
  - the name of the facility to which the minor has been admitted (AMHS and treating unit)
  - the minor's age
  - CIMHA identification number, and

- the name, designation, phone number and email address for an appropriate contact person at the AMHS (e.g. Nurse Unit Manager, Shift Coordinator).
- Further information about the minor’s admission is to be provided on request from the Office of the Public Guardian or the Community Visitor.

### 2.2.2 Use of mechanical restraint, seclusion and physical restraint

- The Office of the Chief Psychiatrist provides monthly reports to the Office of the Public Guardian about the use of mechanical restraint, seclusion or physical restraint of a minor.
- The reports, drawn from data entered in CIMHA, are also provided to AMHS Administrators.
- Administrators must ensure that there are sufficient processes and resources in place to enable the timely entry of data relating to mechanical restraint, seclusion and physical restraint in CIMHA.

### 2.3 Mental Health Review Tribunal (MHRT) notifications

- The MHRT must be notified of the admission, or discharge, of a minor to a high security unit (see section 3).

## 3 High security unit admissions

- Prior approval must be provided by the Chief Psychiatrist before a minor can be admitted to a high security unit.
- This applies for any minor admitted as:
  - a classified patient
  - by way of a transfer from another AMHS, or
  - under a judicial order made by a Supreme or District Court.
- When determining whether the minor should be admitted to a high security unit, the Chief Psychiatrist must have regard to:
  - the minor’s mental state and psychiatric history
  - the minor’s treatment and care needs, and
  - the security requirements for the minor.
- Once the Chief Psychiatrist has provided approval, the Administrator of the AMHS may consent to the minor being admitted to the high security unit only if satisfied the unit has the capacity to assess the minor or provide the minor with the required treatment and care.
- If the minor is being admitted as a classified patient, the *Chief Psychiatrist policy: Classified Patients* and the *Chief Psychiatrist Practice Guidelines for Classified Patients* must be complied with.

### 3.1 MHRT review

- The MHRT must review the detention of a minor in a high security unit within 7 days of their admission. This does not apply however to admissions under a judicial order made by the Supreme or District Court.
- To facilitate the MHRT review, the Administrator of the AMHS must give the MHRT written notice of the admission as soon as practicable after the admission. This notice is provided by forwarding a copy of one of the following to the MHRT (which ever applies):
  - *Custodian Consent (Classified Patient)* form – with section 4 completed, or
  - *Patient Transfer* form.
- The MHRT will determine whether the minor should continue to be detained in the high security unit or if they should be transferred to another AMHS.
- The MHRT must also regularly review the minor at intervals of not more than 3 months. An application for review may also be made by the minor for an interested person (e.g. their parent, carer or legal representative) at any time.
- If the minor stops being detained in the high security unit, the Administrator must, as soon as practicable, give the MHRT written notice of the discharge. This is provided by forwarding a copy of one of the following to the MHRT:
  - *Notice Event (Classified Patient)* form, or
  - *Patient Transfer* form.

## 4 Specific regulated treatments

### 4.1 Seclusion and mechanical restraint

- The provisions of the MHA 2016 in relation to seclusion and mechanical restraint apply to a minor who is a relevant patient in the same way as for an adult who is a relevant patient.
- A relevant patient is a person subject to:
  - a Treatment Authority
  - a Forensic Order
  - a Treatment Support Order, or
  - a person who is absent without permission from an interstate mental health service and who has been detained in an AMHS.
- A parent **cannot** consent to a minor being secluded.
- If a minor is being secluded or mechanically restrained under the MHA 2016, staff involved must be aware of the heightened vulnerability to significant psychological trauma from these practices for minors.

## 4.2 Electroconvulsive therapy

- A minor, or their parent, cannot provide consent for ECT.
- The *Chief Psychiatrist Practice Guidelines for Electroconvulsive Therapy* outlines the requirements for authorising the use of ECT in an emergency and with the approval of the MHRT.
- When determining an application for ECT in relation to a minor, the MHRT must have regard to
  - the views, wishes and preferences of the minor, and
  - the views of parents.
- The MHRT may only approve ECT for a minor if satisfied:
  - the therapy is in the minor's best interest
  - evidence supports the effectiveness of the therapy for the person's particular mental illness
  - evidence supports the effectiveness of the therapy for a person of the minor's age, and
  - if the ECT has previously been performed for the patient, the effectiveness of past attempts.
- At the hearing for the application, the MHRT must appoint a lawyer at no cost to the minor.
- The MHRT website provides further information regarding the process of appointing legal representation: [www.mhrt.qld.gov.au](http://www.mhrt.qld.gov.au).

## 5 Searches

- The provisions of the MHA 2016 in relation to searches apply to a minor in the same way as for an adult.

## 6 Mental Health Court and the MHRT proceedings

### 6.1 Confidentiality

- It is an offence for a person to publish information that identifies, or is likely to lead to the identification of, a minor who has been a party to Mental Health Court or MHRT proceedings.
- Any hearing of the Mental Health Court where the proceedings relate to a minor is not open to the public. The Court may however grant leave for a person to be present during the hearing if satisfied it is in the interests of justice.

### 6.2 MHRT proceedings

- For any MHRT proceeding where the patient is a minor, the MHA 2016 provides that the MHRT must appoint a lawyer to represent the minor at no cost to the minor. The

MHRT website provides further information regarding the process of appointing legal representation: [www.mhrt.qld.gov.au](http://www.mhrt.qld.gov.au).

- The MHA 2016 establishes requirements for the composition of the MHRT when the proceedings involve a minor. If a psychiatrist member is required on the MHRT panel for an application or hearing involving a minor, the psychiatrist member must have relevant knowledge in child and adolescent psychiatry.

## Glossary of Terms

AMHS	Authorised Mental Health Service
CIMHA	Consumer Integrated Mental Health Application
MHA 2016	<i>Mental Health Act 2016</i>

## Referenced Forms, Clinical Notes and Templates

<a href="#">Custodian Consent (Classified Patient) form</a>
<a href="#">Notice Event (Classified Patient) form</a>
<a href="#">Patient Transfer form</a>
<a href="#">Recommendation for Assessment form</a>
<a href="#">Treatment Authority form</a>

## Referenced Documents & Sources

<a href="#">Chief Psychiatrist Policy: Advance Health Directives and 'Less Restrictive Way' of Treatment</a>
<a href="#">Chief Psychiatrist Policy: Classified Patients</a>
<a href="#">Chief Psychiatrist Policy: Treatment Criteria and Assessment of Capacity</a>
<a href="#">Chief Psychiatrist Practice Guidelines for Classified Patients</a>
<a href="#">Chief Psychiatrist Practice Guidelines for Electroconvulsive Therapy</a>
<a href="#">Queensland Health Guide to Informed Decision-making in Healthcare</a>
<a href="#"><i>Mental Health Act 2016</i></a>

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