Protocol for Special Medical Procedures (Sterilisation)

Made pursuant to the approval of
the Australian Guardianship and
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Interpretation:

"*Person*" - unless otherwise specified, the word "person" means both a child and an adult with a decision-making incapacity.

"*Procedure*" – as in a sterilisation procedure, includes a procedure or treatment.

"*Tribunal*" - the word "tribunal" is used in this Protocol as a standard, general identifier to refer to each state and territory body, which has jurisdiction for capacity, guardianship and administration matters. Practitioners and applicants should check the exact name of the relevant body in their state or territory.

1. Background

1.1 In all states and territories of Australia, sterilisation is considered to be such an invasive and irreversible procedure, that where a person cannot give a valid consent to the procedure, an entity such as the Family Court, a state supreme court or guardianship tribunal is the only authority that can provide consent. Further, because of the invasive and irreversible nature of the procedure, the law in all states and territories provides that, unlike many other medical procedures, a person's normal substitute decision-maker for medical and dental treatment cannot make the decision about sterilisation.

1.2 For adults with impaired decision-making abilities, consent to the procedure was, and is, given or refused by the state or territory tribunals that deal with capacity, guardianship and administration issues.

1.3 For children, the question of sterilisation is a matter for the Family Court of Australia, however the tribunals of four states also have this jurisdiction.[1]

1.4 In short, whilst tribunals in all states and territories could give or refuse consent for the sterilisation of an adult, many could not consider child sterilisation applications.

1.5 Thus, to promote consistency between the states and territories, in July 2001, the Attorneys-General of Australia were asked that, in addition to the jurisdiction with respect to adults, all state and territory guardianship tribunals be given jurisdiction to hear applications for the sterilisation of children. This jurisdiction will be concurrent with the Family Court.

1.6 A consequence of bringing child sterilisation into the jurisdiction of each guardianship tribunal was that the protocol for sterilisation previously adopted by all tribunals,[2] only applied to adults. That protocol therefore required review and amendment.

1.7 This also provided the opportunity to update the Protocol to reflect changes in the law and developments in the area of reproductive technologies.

[1] The States with jurisdiction for both adults and children are Queensland, New South Wales, Tasmania and South Australia.

[2] The "adult-only" protocol was agreed to by the Inter-jurisdictional Committee on Guardianship and Administration (now called the Australian Guardianship and Administration Council) at its fifth National Conference on Guardianship and Administration on the 13th October 1996 in Adelaide. That protocol was implemented in all jurisdictions

2. Why a Protocol?

2.1 The term sterilisation is used to mean a surgical intervention that results either directly or indirectly in the termination of an individual's capacity to reproduce.[3]

2.2 In turn, the phrase "sterilisation procedures" or "sterilisation treatments" means those medical interventions which are known, or are reasonably likely in all circumstances, to cause sterilisation whether or not that is the purpose for which they are carried out. Such procedures include endometrial oblation, hysterectomy, tubal ligation and vasectomy.

2.3 The High Court of Australia has highlighted the seriousness and gravity of sterilisation. In the landmark case known as *Marion's Case*[4], the High Court ruled on the law relating to the sterilisation of children, who have profound intellectual handicaps. Its discussion of and enunciation of principles are equally applicable to adults with impaired decision-making capacity.

2.4 The Court noted that the question of sterilisation is particularly difficult because: the person (a child in the case, but equally applicable to adults) lacks the capacity to give consent; the operation involves the removal of a healthy organ; sterilises the person; and, since the person usually requires full-time care, the interests of parents and others are closely involved in the decision.

2.5 For children, the majority of the High Court held that parents do not have the right to give consent to such procedures in the circumstances that arose in that case. Instead, parental power is limited to situations "*where sterilisation is an incidental result of surgery performed to cure a disease or correct some malfunction*."[5]

2.6 The reason for the Court's decision was essentially that the grave risk that would result for the child from an incorrect decision, and, the significant risk of making the wrong decision as to whether the procedure would be in the child's best interest, required the decision to be made by an independent and objective body.

These concerns, as well as the principles enunciated in *Marion's Case*, also apply to adults with impaired decision-making capacity.

2.7 Accordingly, this Protocol is designed to assist the various Australian guardianship tribunals in exercising this power, and to promote consistency across the jurisdictions when dealing with an application for the sterilisation of a person.

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[3] Refer Schedule 1 for each jurisdiction's definition of sterilisation.

[4] *Secretary, Department of Health and Community Services v JMB and SMB (Marion's Case)* (1992) 175 CLR 218.

[5] At 253 per Mason CJ, Dawson, Toohey and Gaudron JJ.

2.8 Importantly, the Protocol should also assist applicants, potential applicants, relevant professionals and members of the public in understanding the decision-making process and what is required of them in bringing, or objecting to an application to sterilise a person.

3. Aims and objectives

3.1 Procedurally, the Protocol aims to:

(a) Set out the matters to be considered by tribunals hearing cases for the proposed sterilisation of persons.

(b) Achieve as much consistency as possible between the jurisdictions.

(c) Ensure that the matter proceeds in a timely manner and that all necessary evidence is placed before the tribunal.

3.2 For the person and their carers, the aim of the Protocol is to:

(a) Promote, enhance and protect the best interests of the person.

(b) Promote positive outcomes for the person.

(c) Give the people involved or concerned in the decision an opportunity and forum to raise and discuss all relevant issues.

(d) Ensure that alternative and less invasive procedures have been tried or considered.

(e) Ensure that sterilisation is a last resort, after other options have failed to produce outcomes satisfactory to the person.

(f) Ensure clarification of and delineation between what is in the best interests of the person and what is in the interests of the person's care giver/s.

4. Decision-making principles

4.1 The tribunal hearing the matter must be guided by the following principles:

(a) **Same human rights -**The right of all persons to the same basic human rights regardless of a particular person's capacity.

(b) **Individual value and autonomy -** A person's right to respect for his or her human worth and dignity as an individual.

(c) **Maximum participation, minimal limitations –** a person's right to participate, to the greatest extent practicable, in decisions affecting the person's life.

(d) **The expressed wishes of the person to be considered** – in so far as the person is capable of expressing a wish.

(e) **Encouragement of self-reliance and self management -** The importance of encouraging and supporting a person to achieve his or her maximum physical, social, emotional and intellectual potential, and to become as self-reliant as practicable.

(f) **The least restrictive alternatives** – If there is a choice between a more or less intrusive and permanent form of treatment, the less intrusive way should be adopted unless it is, or would be, unsatisfactory.

(g) **Maintenance of existing supportive relationships –** Considering the views of and impact on the decision for the person's family and/or carers**.**

(h) **Maintenance of cultural environment and values -** The importance of maintaining a person's cultural environment and set of values, including any religious beliefs held by the person and/or the person's parents or care givers.

5. The Protocol

PHASE 1: THE APPLICATION

1a. Who can apply?

5.1 Ordinarily, for a child, one or both parents of the child or a medical practitioner would bring the application. However, an application may also be brought by a person who can demonstrate to the tribunal that they have an interest in the care, welfare and development of the child.

5.2 For adults, an application would ordinarily be brought by the adult's primary carer/s, which could include parents or other family members or a medical practitioner. Applications may also be brought by any person, who can demonstrate to the tribunal that they have an interest in the care, welfare and development of the adult.

1b. Bringing an application

5.3 If the applicant:

(a) has obtained medical advice concluding that the person lacks capacity to give consent to the procedure; and

(b) has explored alternative and less invasive procedures, and forms the view that sterilisation is in the person's best interests,

then the person/s may bring an application to the tribunal.

However, it should be noted, that despite the applicant's information about the person's capacity and exploration of treatment options, **these matters are ultimately for the tribunal to consider and decide.**

5.4 The application and accompanying documentation must be in the tribunal's approved form - a prospective applicant should contact the relevant tribunal registry in their state or territory for a copy of the relevant form/s.

1c. The content of the application

5.5 The tribunal will require information about the person, the person's parents and carers, his/her social environment, and his/her medical background.

5.6 In addition, the applicant will be required to provide reports by medical, psychological or other experts (including the person's treating doctor and a specialist in the relevant area of medicine who is not involved in the person's care, and who has no interest in the outcome of the hearing), concerning:

(a) the person's capacity, including:

(i) whether the person is capable of making his or her own decision about undergoing the procedure; and

(ii) where the person is a child, whether the child is likely to develop sufficiently to be able to make an informed judgment about undergoing the procedure within the time in which the procedure should be carried out, or within the foreseeable future; and

(b) the reproductive health of the person including any difficulties in relation to menstruation; and

(c) the exact nature and purpose of the proposed procedure; and

(d) that the proposed procedure is necessary for the welfare of the person, and meets any tests set down in the legislation of the particular state or territory (refer Schedule 3); and

(e) why alternative and less invasive procedures would be, or have proven to be, inadequate; and

(f) the likely long term social and psychological effects of the procedure on the person; and

(g) whether scientific or medical advances are reasonably anticipated within the foreseeable future that will make possible either improvement in the person's condition or alternative and less drastic sterilisation procedures; and

(h) any other relevant considerations or any other information required by the relevant state legislation.

5.7 The tribunal may also obtain independent medical reports concerning the above matters.

PHASE 2: ONCE THE APPLICATION IS RECEIVED BY THE TRIBUNAL

2a. The first threshold question – does the person have capacity?

5.8 After receiving an application for the proposed sterilisation of a person, the tribunal must first determine whether the person can consent to his or her own treatment.

5.9 The assessment of a person's capacity to consent to or to refuse medical or dental treatment is a matter of clinical judgement subject to legal requirements. The opinions of doctors as to a person's capacity are of great assistance, but the question of competence is ultimately a decision for the Tribunal.

5.10 To give consent to a procedure, a person must have capacity to do so. The presumption that a person has the mental capacity to consent or to refuse consent is a strong one, is not easily displaced and must be considered individually on the merits and facts of each specific case.

5.11 **"**Capacity**"** means a person is capable of[6] -

(a) understanding the nature and effect of decisions about the matter in question – in this case, sterilisation; and

(b) freely and voluntarily making decisions about the matter; and

(c) communicating the decisions in some way.

5.12 For children, it was accepted by the High Court in *Marion's Case*, that a child's capacity and thus ability to give valid consent will increase as the child's maturity develops. In ordinary circumstances, the older the child, the more likely she or he will have capacity for the matter and be capable of giving valid consent. However, in deciding whether a child can consent to a special medical procedure such as sterilisation, the child's capacity and maturity must be weighed against the seriousness of the treatment proposed.

5.13 Neither a child nor an adult will be able to give valid consent to a sterilisation procedure if she or he is unable to understand the nature of the treatment, and also unable to attach appropriate significance to the risks and need for treatment.

5.14 It may also be relevant to consider if the person is, or may be, affected by the differing views of his or her carers such that the person is caught in the dispute and may be influenced by the wishes, views or opinions of others.

[6] This is Queensland's definition; refer Schedule 2 for each jurisdiction's definition of 'capacity'.

5.15 When considering this first threshold issue, the tribunal may:

(a) Obtain an independent assessment of the person's capacity to give informed consent for the procedure at the time of the hearing and whether the person is likely to sufficiently develop such abilities in the foreseeable future.

(b) Hold a preliminary hearing to decide the question of capacity.

2b. The second threshold question – is sterilisation required?

5.16 The significant developments in the area of reproductive technology, including contraception and menstruation management, mean that there are a range of treatments and procedures available, all of which are less invasive and less permanent than sterilisation.

5.17 Accordingly, before considering sterilisation, all other alterative treatments should be considered, and, if appropriate, tried, *before* bringing an application for sterilisation.

5.18 Consequently, any person bringing an application to a tribunal for the sterilisation of a person must consider alternative and less invasive procedures and address this in their material; refer 5.6 above.

5.19 Depending on the content of the application and supporting material, the tribunal may also obtain an independent assessment of the alternative treatments or procedures available in the circumstances.

5.20 If the tribunal becomes satisfied that other less invasive options should be considered, the tribunal will notify the applicant and may require they consider such options and then provide further information to the tribunal about the utility or outcome of such alternative treatments or procedures.

PHASE 3: DETERMINATION

3a. Pre-hearing Directions

5.21 When the tribunal is satisfied on the two threshold questions, the tribunal may give any or all of the following directions:

(a) make the person a party and appoint a next friend or legal guardian for the person;

(b) appoint a separate representative for the person;

(c) join any other appropriate person as a respondent (for example, a parent if they are not the applicant);

(d) cause the application and accompanying reports/material to be served on any other person/s, as the Tribunal thinks proper;

(e) identify and advise any or all parties in writing of any further information required, and the date by which the additional material is to be filed with the tribunal;

(f) mindful of any urgency, fix a date for the hearing of the application.

5.22 Once the date has been fixed, the tribunal will issue a Notice of Hearing to all parties.

3b. The hearing

5.23 The tribunal will conduct the hearing according to its usual practice and procedure.

5.24 In making its decision, the tribunal will be guided by the decision-making principles (refer 4 above), and the specific facts and circumstances relevant to those principles as contained in the application, evidence and reports from health providers (refer 5.5 and 5.6 above).

5.25 The standard of proof is not necessarily expressed in the same way in all jurisdictions, but the gravity of the matter must be taken into account, thereby affecting the standard no matter how expressed.[7]

5.26 Where there is any conflict between this protocol and the laws of any state or territory laws, the laws of the state or territory will prevail.

[7] *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 343 per Latham J, at 360-63 per Dixon J

SCHEDULE 1 - COMPARATIVE DEFINITIONS OF STERILISATION

Jurisdiction	Definition	Source
QLD	"(1) "Sterilisation" is health care of an adult who is, or is reasonably likely to be, fertile that is intended, or reasonably likely, to make the adult, or ensure the adult is, permanently infertile. *Examples of sterilisation—* Endometrial oblation, hysterectomy, tubal ligation and vasectomy. (2) Sterilisation does not include health care primarily to treat organic malfunction or disease of the adult."	Sch 2, s.9 *Guardianship and Administration Act* 2000
	"(1) Sterilisation is health care of a child who is, or is reasonably likely to be, fertile that is intended, or reasonably likely, to make the child, or to ensure the child is, permanently infertile. *Examples of sterilisation—* endometrial oblation, hysterectomy, tubal ligation and vasectomy (2) However, sterilisation does not include health care without which an organic malfunction or disease of the child is likely to cause serious or irreversible damage to the child's physical health.	s.80B *Guardianship and Administration Act 2000*
NSW	" "special treatment" means: (a) any treatment that is intended, or is reasonably likely, to have the effect of rendering permanently infertile the person on whom it is carried out, or	s.33(1) *Guardianship Act* 1987;
	" "special medical treatment" means: (a) any medical treatment that is intended, or is reasonably likely, to have the effect of rendering permanently infertile the person on whom it is carried out, not being medical treatment: (i) that is intended to remediate a life-threatening condition, and (ii) from which permanent infertility, or the likelihood of permanent infertility, is an unwanted consequence, or	s.175(5) *Children and Young Persons (Care and Protection) Act* 1998
VIC	" "special procedure" means- (a) any procedure that is intended, or is reasonably likely, to have the effect of rendering permanently infertile the person	s.3(1) *Guardianship and Administration Act* 1986

	on whom it is carried out;"	
SA	""**sterilisation**" means any treatment given to a person that results in, or is likely to result in, the person being infertile."	s.3, *Guardianship and Administration Act* 1993
WA	""**procedure for the sterilization"** does not include a lawful procedure that is carried out for a lawful purpose other than sterilization but that incidentally results or may result in sterilization;"	s.56, *Guardianship and Administration Act* 1990
TAS	" "special treatment" means – (a) any treatment that is intended, or is reasonably likely, to have the effect of rendering permanently infertile the person on whom it is carried out;"	s.3 *Guardianship and Administration Act* 1995
ACT	***"prescribed medical procedure*** means— (a) … (b) reproductive sterilisation; or (c) a hysterectomy; or (d) a medical procedure concerned with contraception; …"	Dictionary, s.2, *Guardianship and Management of Property Act* 1991.
NT	"a medical procedure relating to (a) contraception; …"	s.21(4)(b) *Adult Guardianship Act* 1988

SCHEDULE 2 - COMPARATIVE DEFINITIONS OF 'CAPACITY'

Jurisdiction	Definition	Source
QLD	" "**capacity**", for a person for a matter, means the person is capable of-- (a) understanding the nature and effect of decisions about the matter; and (b) freely and voluntarily making decisions about the matter; and (c) communicating the decisions in some way." "**impaired capacity**", for a person for a matter, means the person does not have capacity for the matter."	Sch 4 *Guardianship and Administration Act* 2000
NSW	"… a person is incapable of giving consent to the carrying out of medical or dental treatment if the person: (a) is incapable of understanding the general nature and effect of the proposed treatment, or (b) is incapable of indicating whether or not he or she consents or does not consent to the treatment being carried out"	s.33(2) *Guardianship Act* 1987;
VIC	"… a person is incapable of giving consent to the carrying out of a special procedure or medical or dental treatment if the person- (a) is incapable of understanding the general nature and effect of the proposed procedure or treatment; or (b) is incapable of indicating whether or not he or she consents or does not consent to the carrying out of the proposed procedure or treatment".	s.36(2) *Guardianship and Administration Act* 1986

SA	"**mental incapacity**" means the inability of a person to look after his or her own health, safety or welfare or to manage his or her own affairs, as a result of: (a) any damage to, or any illness, disorder, imperfect or delayed development, impairment or deterioration, of the brain or mind; or (b) any physical illness or condition that renders the person unable to communicate his or her intentions or wishes in any manner whatsoever;" "**mentally incapacitated person**" means a person with a mental incapacity;"	s3, *Guardianship and Administration Act* 1993
WA	[where the person is]: "(i) incapable of looking after his own health and safety; (ii) unable to make reasonable judgments in respect of matters relating to his person; or (iii) in need of oversight, care or control in the interests of his own health and safety or for the protection of others;"	s.43(1)(b), *Guardianship and Administration Act* 1990
TAS	"…a person is incapable of giving consent to the carrying out of medical or dental treatment if the person - (a) is incapable of understanding the general nature and effect of the proposed treatment; or (b) is incapable of indicating whether or not her or she consents or does not consent to the carrying out of the treatment."	s.36(2) *Guardianship and Administration Act* 1995
ACT	"For this Act, a person has ***impaired decision-making ability*** if the person's decision-making ability is impaired because of a physical, mental, psychological or intellectual condition or state, whether or not the condition or state is a diagnosable illness."	s6 *Guardianship and Management of Property Act* 1991
NT	"… if the Court is satisfied that the represented person understands the nature of the proposed major medical procedure, and is capable of giving or refusing consent to that procedure …"	s21(7) *Adult Guardianship Act* 1988

SCHEDULE 3 – TESTS OF NECESSITY OF PROCEDURE FOR WELFARE OF PERSON

Jurisdiction	Definition	Source
QLD	**"(1)** The tribunal may consent, for an adult with impaired capacity for the special health matter concerned, to sterilisation of the adult only if the tribunal is satisfied— (a) one of the following applies— (i) the sterilisation is medically necessary; (ii) the adult is, or is likely to be, sexually active and there is no method of contraception that could reasonably be expected to be successfully applied; (iii) if the adult is female—the adult has problems with menstruation and cessation of menstruation by sterilization is the only practicable way of overcoming the problems; and (b) the sterilisation can not reasonably be postponed; and (c) the adult is unlikely, in the foreseeable future, to have capacity for decisions about sterilisation. **(2)** Sterilisation is not medically necessary if the sterilisation is— (a) for eugenic reasons; [footnote reads: Eugenics is 'the science of improving the qualities of the human race, especially the careful selection of parents'—*Macquarie Dictionary*, 3rd edition, 1997.] or (b) to remove the risk of pregnancy resulting from sexual abuse. **(3)** Also, in deciding whether to consent for the adult to a sterilization procedure, the tribunal must take into account— (a) alternative forms of health care, including other sterilization procedures, available or likely to become available in the foreseeable future; and (b) the nature and extent of short-term, or long-term, significant risks associated with the proposed procedure and available alternative forms of health care, including other sterilisation procedures."	s.70 *Guardianship and Administration Act 2000*
	(1) On an application made under part 3, the tribunal may, by order, consent to the sterilisation of a child with an impairment. (2) The tribunal may consent to the sterilisation only if the tribunal is satisfied the sterilisation is	ss.80C and 80D of the *Guardianship and Administration Act 2000*

	in the best interests of the child. (3) A child's sterilisation, to which the tribunal has consented, is not unlawful. 80D Whether sterilisation is in child's best interests (1) The sterilisation of a child with an impairment is in the child's best interests only if— (a) one or more of the following applies— (i) the sterilisation is medically necessary; (ii) the child is, or is likely to be, sexually active and there is no method of contraception that could reasonably be expected to be successfully applied; (iii) if the child is female—the child has problems with menstruation and cessation of menstruation by sterilisation is the only practicable way of overcoming the problems; and (b) the child's impairment results in a substantial reduction of the child's capacity for communication, social interaction and learning; and (c) the child's impairment is, or is likely to be, permanent and there is a reasonable likelihood, when the child turns 18, the child will have impaired capacity for consenting to sterilisation; and (d) the sterilisation can not reasonably be postponed; and (e) the sterilisation is otherwise in the child's best interests. (2) Sterilisation is not in the child's best interests if the sterilisation is— (a) for eugenic reasons; or (b) to remove the risk of pregnancy resulting from sexual abuse. (3) In deciding whether the sterilisation is in the child's best interests, the tribunal must— (a) ensure the child is treated in a way that respects the child's dignity and privacy; and (b) do each of the following— (i) in a way that has regard to the child's age and impairment, seek the child's views and wishes and take them into account; (ii) to the greatest extent practicable, seek the views of each of the following persons and take them into account— (A) any parent or guardian of the child; (B) if a parent or guardian is not the child's primary carer, the child's primary carer; (C) the child representative for the child; (iii) take into account the information given by any health provider who is treating, or has treated, the child; and (c) take into account— (i) the wellbeing of the child; and	

	(ii) alternative forms of health care that have proven to be inadequate in relation to the child; and (iii) alternative forms of health care that are available, or likely to become available, in the foreseeable future; and (iv) the nature and extent of short-term, or long-term, significant risks associated with the proposed sterilisation and available alternative forms of health care. (4) The child's views and wishes may be expressed in the following ways— (a) orally; (b) in writing; (c) in another way including, for example, by conduct.	

NSW	(1) The Tribunal must not give consent to the carrying out of medical or dental treatment on a patient to whom this Part applies unless the Tribunal is satisfied that the treatment is the most appropriate form of treatment for promoting and maintaining the patient's health and well-being. (2) However, the Tribunal must not give consent to the carrying out of special treatment unless it is satisfied that the treatment is necessary: (a) to save the patient's life, or (b) to prevent serious damage to the patient's health, or unless the Tribunal is authorised to give that consent under subsection (3). (3) In the case of: (a) special treatment of a kind specified in paragraph (b) of the definition of that expression in section 33 (1), or (b) prescribed special treatment (other than special treatment of a kind specified in paragraph (a) of that definition), the Tribunal may give consent to the carrying out of the treatment if it is satisfied that: (c) the treatment is the only or most appropriate way of treating the patient and is manifestly in the best interests of the patient, and (d) in so far as the National Health and Medical Research Council has prescribed guidelines that are relevant to the carrying out of that treatment—those guidelines have been or will be complied with as regards the patient. "…unless the Guardianship Tribunal is satisfied that it is necessary to carry out the treatment on the child in order to save the child's life or to prevent serious damage to the child's	s.45 *Guardianship Act* 1987; s.175(3) *Children and Young Persons (Care And Protection) Act* 1998

	psychological or physical health."	
VIC	… "the Tribunal may consent to the carrying out of a special procedure only if it is satisfied that – (a) the patient is incapable of giving consent; and (b) the patient is not likely to be capable, within a reasonable time, of giving consent; and (c) the special procedure would be in the patient's best interests." "… for the purposes of determining whether any special procedure or any medical or dental treatment would be in the best interests of the patient, the following matters must be taken into account – (a) the wishes of the patient, so far as they can be ascertained; and (b) the wishes of any nearest relative or any other family members of the patient; and (c) the consequences to the patient if the treatment is not carried out; and (d) any alternative treatment available; and (e) the nature and degree of any significant risks associated with the treatment or any alternative treatment; and (f) whether the treatment to be carried out is only to promote and maintain the health and well-being of the patient; and (g) any other matters prescribed by the regulations."	s. 42E *Guardianship and Administration Act 1986* s. 38 *Guardianship and Administration Act 1986*
SA	(2) The Board cannot consent to a sterilisation unless— (a) it is satisfied that it is therapeutically necessary for the sterilisation to be carried out on the person; or (b) it is satisfied— (i) that there is no likelihood of the person acquiring at any time the capacity to give an effective consent; and (ii) that the person is physically capable of procreation; and (iii) that--	s.61 *Guardianship and Administration Act* 1993

	(A) the person is, or is likely to be, sexually active, and there is no method of contraception that could, in all the circumstances, reasonably be expected to be successfully applied; or (B) in the case of a woman, cessation of her menstrual cycle would be in her best interests and would be the only reasonably practicable way of dealing with the social, sanitary or other problems associated with her menstruation, and has no knowledge of any refusal on the part of the person to consent to the carrying out of the sterilisation, being a refusal that was made by the person while capable of giving effective consent and that was communicated by the person to a medical practitioner.	

WA	"(1) The Board may, by order, consent to the sterilization of a represented person if it is satisfied that the sterilization is in the best interests of the represented person."	s.63 *Guardianship and Administration Act* 1990
TAS	"(1) … the Board may consent to the carrying out of the medical or dental treatment if it is satisfied that – (a) the medical or dental treatment is otherwise lawful; and (b) that person is incapable of giving consent; and (c) the medical or dental treatment would be in the best interests of that person. (2) For the purposes of determining whether any medical or dental treatment would be in the best interests of a person to whom this Part applies, matters to be taken into account by the Board include – (a) the wishes of that person, so far as they can be ascertained; and (b) the consequences to that person if the proposed treatment is not carried out; and (c) any alternative treatment available to that person; and (d) whether the proposed treatment can be postponed on the ground that better treatment may become available and whether that person is likely to become capable of consenting to the treatment; and	s.45 *Guardianship and Administration Act* 1995

	(e) … (f) any other matters prescribed by the regulations."	
ACT	"(1) the Tribunal … may, on application, by order, consent to a prescribed medical procedure … for the person if it is satisfied that— (a) the procedure is otherwise lawful; (b) the person is not competent to give consent and is not likely to become competent in the foreseeable future; (c) the procedure would be in the person's best interests; and (d) the person, the guardian and any other person whom the Tribunal considers should have notice of the proposed procedure are aware of the application for consent. (2) … (3) In determining whether a particular procedure would be in the person's best interests, the matters that the Tribunal shall take into account include— (a) the wishes of the person, so far as they can be ascertained; (b) what would happen if it were not carried out; (c) what alternative treatments are available; (d) whether it can be postponed because better treatments may become available."	s.70 *Guardianship and Management of Property Act* 1991
NT	" …that it would be in the best interests of the represented person …"	s.21(8) *Adult Guardianship Act* 1988