

The purpose of this resource is to assist AMOs to complete the [Consent to Surgical Operation Application Form](#), and other related [Consent to Surgical Operation Forms](#).

A consent to surgical operation application is required where an involuntary mental health patient is incapable of providing informed consent, and where one of their designated carers agrees, in writing, to the procedure. Consent is given by the Secretary of NSW Health or their delegate under [section 100](#) of the *Mental Health Act 2007* (the Act).

Please note it can take up to **four business days** to process an application. Once the application is complete please send to MOH-MentalHealthBranch@health.nsw.gov.au. The email listed on the form is not current. If the surgery is an emergency (necessary to save the life of the patient or prevent serious damage to health or to prevent significant pain or distress), the Secretary’s consent is not necessary, and the AMO can provide consent. Please see ‘**Emergency Provisions**’ section below.

Section 1

Are you an authorised medical officer (AMO) of the mental health facility?

An authorised medical officer is defined in [section 4](#) of the Act as:
 “(a) the medical superintendent of the mental health facility, or
 (b) a medical officer, nominated by the medical superintendent for the purposes of this Act, attached to the mental health facility concerned.”

Insert correct name of the surgical operation. Please also specify whether **general anaesthetic or local anaesthetic** will be used.

Please make sure the name of the surgery is consistent across all forms completed.

A surgical operation is defined in [section 98](#) of the Act as “a surgical procedure, a series of related surgical operations or surgical procedures, and the administration of an anaesthetic for the purpose of medical investigation.”

APPLICATION FOR CONSENT TO SURGICAL OPERATION – MENTAL HEALTH ACT

MENTAL HEALTH ACT 2007
Section 100

A copy of this form must be placed in the patient’s health record.

Section 1

I am an authorised medical officer of
(name of mental health facility)

This application is made in respect of
(full name of patient)

who is an involuntary patient (this includes a forensic patient or correctional patient) of this mental health facility.

The name of the proposed surgical operation is

.....

Holes Punched as per AS2828-1-2004
BINDING MARGIN - NO WRITING

APPLICATION FOR CONSENT TO SURGICAL OPERATION – MENTAL HEALTH ACT 2007

Insert name of mental health facility. Make sure the name of the **declared mental health facility** is consistent on all the forms completed.

If the patient who requires surgery is a **voluntary patient or assessable person without capacity**, consent must be obtained in accordance with the [Guardianship Act 1987](#).

Section 2

The report from the AMO must provide detail about why the AMO believes the **patient cannot consent to the surgery and why the surgery is desirable and in the patient's best interest.**

The report must be **signed by the AMO who made the application.**

Section 2

In order for the Secretary (or delegate) to provide consent for surgery for an involuntary patient, it is necessary for the authorised medical officer to provide a report that addresses the following issues:

- On what basis have you formed the opinion that the patient is incapable of giving consent to the operation; and
- Why is it desirable, having regard to the interests of the patient, to perform the surgical operation on the patient.

In considering the question of capacity, it is necessary to examine the ability of the individual to comprehend and retain the material information, and use and weigh up that information to make a decision.

Section 3

Insert the dates that the designated carer was notified and responded with their decision.

Ensure the dates of notification and decision of designated carer are matching on all forms.

If the involuntary patient does not have a designated carer, the carer cannot be reached or the designated carer will not give consent, the AMO must seek consent from the [Mental Health Review Tribunal](#) instead of NSW Health under [section 101](#) of the Act.

Section 3

The designated carer of the patient was advised in writing on /..... /..... that an application would be made to the NSW Ministry of Health or to the Mental Health Review Tribunal for consent to perform the surgical operation.

The designated carer has replied in writing on /..... /..... indicating agreement to the performance of the surgical operation.

If this application is made within 14 days of the date of writing to the designated carer, the reason for the urgency of the circumstances needs to be explained in the authorised medical officer's report. Alternatively, the authorised medical officer can seek agreement from the designated carer that they do not object to the application being made to the Secretary within 14 days.

Section 4

The following Mental Health Act forms can be found on the NSW Health website:

- [Application for consent to surgical operation form](#)
- [Notification to designated carer of proposed surgical operation form](#)
- [Decision of designated carer in respect of proposed surgical operation form](#)

Section 4

The following documents are required as part of the application:

- A copy of the mental health facility's letter to the patient's designated carer;
- A copy of the designated carer's agreement in writing to the performance of the surgical operation (NOTE: the description of the surgical operation in the designated carer's agreement needs to be consistent with the description in the letter to the designated carer);
- A report signed by the authorised medical officer that addresses the issues raised in Section 2 above;
- A copy of the current involuntary patient order (or forensic/correctional patient order) of Mental Health Review Tribunal; and
- A copy of any written advice from consultants in relation to the proposed surgical operation (this is not an essential requirement, but where such written advice exists it should be provided).

Emergency Surgery Provisions

Under [section 99](#) of the Act, an AMO or the Secretary may consent to the performance of a surgical operation on an involuntary patient (other than a forensic patient or correctional patient not suffering from a mental illness) if they are of the opinion that:

- (a) the patient is incapable of giving consent to the operation or is capable of giving consent but refuses to give that consent or neither gives nor refuses to give that consent, and
- (b) it is necessary, as a matter of urgency, to perform a surgical operation on the patient in order to save the patient's life or to prevent serious damage to the patient's health or to prevent the patient from suffering or continuing to suffer significant pain or distress.

The consent to the emergency surgery is to be in writing and signed by the person giving the consent (the AMO, the Secretary or their delegate). [The Mental Health Act Guidebook](#) specifies that the decision to proceed with the emergency surgery should be clearly documented in the person's hospital records along with the reasons for the decision.

Under [section 99\(4\)](#) of the Act, the AMO of the mental health facility in which the involuntary patient is detained must, as soon as practicable after the performance of a surgical operation consented to under section 99, notify the Tribunal of the operation. This [notification form](#) can be used.

Under [section 78\(1\)\(f\)](#) of the Act, the AMO of a mental health facility must take all reasonably practicable steps to notify any designated carer and the principal care provider (if the principal care provider is not a designated carer) if a surgical operation is performed on the patient or person. This [notification form](#) can be used to notify carers.

If you have any questions please contact MOH-MentalHealthBranch@health.nsw.gov.au