

Special provisions governing informed consent to electroconvulsive treatment (ECT) in Australian and New Zealand Mental Health Acts

	ACT: Mental Health Act 2015 ss8, 27, 30–31, 146, 148, 152	NSW: Mental Health Act 2007 ss 88, 91–2, 96; <i>ECT Minimum Standard of Practice NSW 2011</i>	NT: Mental Health and Related Services Act 1998 s66	QLD: Mental Health Act 2016 ss232–5, 507–9; <i>The Administration of Electroconvulsive Therapy 2018</i>	SA: Mental Health Act 2009 ss232–3; <i>ECT Chief Psychiatrist Standard 2014; ECT Policy Guideline 2014</i>	TAS: Mental Health Act 2013	VIC: Mental Health Act 2014 ss 90, 93–4, <i>ECT Treatment: Chief Psychiatrist's Guideline 2019</i>	WA: Mental Health Act 2014 ss192–199; 409–15; <i>Chief Psychiatrist's Guidelines for the use of ECT 2006</i>	NZ: Mental Health Act (Compulsory Assessment and Treatment) Act 1992 , ss59–60, <i>Guidelines to MH Act 2012 10.4</i>
Special factors to be considered when determining capacity to consent to ECT	N/A	A person is presumed to be incapable of giving informed consent to ECT if, when consent is sought, the person is affected by medication that impairs the person's ability to give that consent.	N/A	Explicit requirement: the patient must have capacity to give informed consent; this exists if they can understand the nature and effect of a decision relating to the treatment and make and communicate the decision. Consent must be given freely, not obtained by force, threat, intimidation, inducement, deception or exercise of authority.	Consent must be informed and effective.	No reference to ECT in the Act or regulations.	All patients must be presumed to have capacity to give informed consent unless it can be demonstrated that the person lacks capacity when the decision needs to be made. Capacity may develop before or after treatment.	No ECT on under-14s. Psychiatrist must decide if the person has the capacity to give informed consent. Unless given as emergency treatment, ECT must not be performed on a person who refused to give, or was incapable of giving, informed consent. If a patient passively acquiesces to treatment the treating psychiatrist cannot view that lack of protest as consent. Consultation between patient, family and doctor is essential before and during a course of ECT.	Capacity to provide consent may fluctuate. A return of capacity to consent to ECT, or a withdrawal of consent to ECT at any stage, should lead to a re-evaluation of the legal basis of any further treatment. The responsible clinician shall, wherever practicable, seek to obtain the consent of the patient even though that treatment may be authorised by or under the Act without the patient's consent. If a patient passively acquiesces to treatment the treating psychiatrist cannot view that lack of protest as consent. Psychiatrists must consider the provisions on informed consent in the <i>RANZCP 2010 Code of Ethics: Principle 5</i> .
Explanations that must be given and understood when establishing consent to ECT	N/A	Fair explanation of the procedures; full description of any possible risks or discomforts, and alternative treatments; full disclosure of any financial interests involving the practitioners and the facility; notice of right to obtain legal/medical advice, withdraw consent at any time, and have any inquiries answered (and the answers must appear to be understood).	N/A	Full explanation in a form and language likely to be understood about: the treatment; possible pain, discomforts, risks and side effects; alternative methods of treatment available and results of not getting ECT. Patient must understand nature and effect of treatment and right to withdraw consent.	N/A	N/A	N/A	Explain the condition and rationale for ECT with enough information to allow balanced judgement, including risks, benefits, alternatives, recovery period, out of pocket expenses and follow up care. Advise that results cannot be guaranteed.	N/A
Who can provide consent to ECT on behalf of the patient?	Guardian or attorney with authority to give consent for medical treatment.	N/A	Adult guardian or decision-maker for the person, or the Local Court.	N/A	Medical agent or guardian of the patient or by the Tribunal (or parent, if under 16 and lacking capacity).	N/A	A person who has the legal authority to consent on behalf of a minor (under 18).	An adult's enduring guardian or guardian or the person responsible for the adult; parent or guardian if a minor.	N/A
Can the patient refuse or consent to ECT through an advance health directive or enduring power of attorney?	Yes (two witnesses – instead of one – must witness the signatures when advance consent to ECT is given).	N/A	N/A	Yes.	Yes.	N/A	No; the psychiatrist must consider the views and preferences of the patient expressed in any advance statement, but other factors must be regarded when deciding if there is no less restrictive way to provide treatment.	Yes.	N/A
Penalties for performing ECT without obtaining informed consent	Maximum penalty: 50 penalty units, imprisonment for 6 months or both.	Maximum penalty: 50 penalty units.	Maximum penalty: 40 penalty units.	Maximum penalty: 200 penalty units or 2 years imprisonment.	Maximum penalty: \$50,000 or 4 years imprisonment.	N/A	N/A	Penalty: \$15,000 and imprisonment for 2 years.	N/A

Disclaimer: These tables were developed by the RANZCP as at 30 June 2017 in order to allow key provisions in the mental health Acts to be compared. They were updated on 19 June 2019 to reference updated ECT guidelines only. They are intended for reference purposes only and are not intended to be a substitute for legal or clinical advice.

COMMENT: Most Acts subject ECT to special, additional regulations (when compared to other forms of psychiatric treatment). Most of these regulations contain special provisions governing informed consent. The provisions are designed to ensure that consent is genuinely informed, effective and freely given. Several Acts set out the matters that must be explained (and understood) in considerable detail. Penalties for administering ECT without obtaining informed consent vary widely – from jurisdictions with no penalties listed at one end of the spectrum, to South Australia where the maximum penalty is a \$50,000 fine or 4 years imprisonment.