



Confidentiality and Information Sharing – Part 2: Guardianship, Responsible Persons, Cultural and Clinical Scenarios

To help clarify who can provide consent on a person's behalf and what is involved, we've added Guardianship Orders; Guardians; and Persons Responsible to today's session. I would also like to thank Josephine Ford, Director Clinical Service Planning, Fiona Stanley Hospital, for her valuable contribution today, and to the team for bringing together these sessions.

Dr Emma Crampin, Deputy Chief Psychiatrist

Key Messages

- A guardianship order is an order made by the State Administrative Tribunal under the Guardianship and Administration Act 1990 (GAA Act), that appoints a person as another person's guardian.
- A **guardian** is responsible for making personal; lifestyle; and treatment decisions on behalf of a person who lacks the capacity to make their own decisions.
 - A **plenary guardian** may make treatment decisions on behalf of a represented person, as well as decisions regarding where they live, and with whom, education, their work and relationships.
 - A **limited guardian** may make only those decisions that are specified in the guardianship order.
- **Anyone can apply for a guardianship order** with respect to another person, including family members, friends, clinicians, or the Public Advocate. They must be an adult, act in the person's best interests and not have a conflict of interests.
- **Treatment decisions:** Section 110ZD of the GAA Act provides that a person responsible may make a treatment decision on behalf of a person who is unable to make reasonable judgments in respect of the treatment.
 - A person responsible can make decisions on behalf of a person who lack capacity if the person does not have a guardian (GAA Act s.110ZD).
 - In the absence of a guardian, advanced health directive or person responsible, a medical practitioner can make a treatment decision to provide urgent treatment.
- **Relevant information**, which is directly related to current treatment and care, can be shared between managers of mental health services including hostels as per the *Mental Health Act 2014* (MH Act). However, it's not blanket permission for all information and seeking consent first is best practice.
- **Clinicians have an obligation to provide culturally safe care and access to Aboriginal supports wherever practicable** under the MH Act. Get to know your local Elders to guide information sharing.

Clinical Standards: Partnering with consumers and carers – common across standards

Information sharing about treatment, mental health services and individualised care plans is central to collaborative partnerships with carers and consumers and key to safe and high-quality care.

Partnering with Consumers Standard, National Safety and Quality Health Service Standard (NSQHS) – Sets out expectations for partnering with consumers:

1. Actively involve patients in their own care.
2. Meet the patient's information needs and information on their rights.
3. Share decision-making.
4. Involve them in development, the evaluation and design of services.



Chief Psychiatrist's Standard for Carer and Consumer Involvement – recognition, respect & partnership

Consumers: Consumers are partners in all aspects of treatment, care and planning. Informed consent is sought which requires current and accurate information to be provided, with supports for decision making available as needed.

Carers: Services engage with carers across all stages and planning of care - recovery, crisis, discharge, transfer. Where the consumer actively declines carer involvement, the service will consider appropriate strategies to engage the carer. Carers, nominated support and close family have a right to a person's information unless the psychiatrist applies exclusions (MH Act).

Consider the safety and privacy of both the consumer and carer – if unsure or if it is complex – escalate and document.

Who can consent to treatment for adult who lacks capacity?

The **person responsible** is determined according to a list in the GAA Act:

1. Spouse de facto > child > parent > sibling
2. Nearest relative
3. Primary provider of care and support (unpaid)
4. Close personal relationship

Who can consent to urgent treatment for an adult without capacity?

A health professional may only provide urgent treatment without consent when it is not practicable to use the advanced health directive, the responsible person or guardian.

Can a guardian make decisions about restraint?

Only if it is specified in the guardianship order.

If it's not in the order - no.

Aboriginal cultural awareness and safety

It is essential that services proactively get to know the Aboriginal Elders who are active and involved in their local community. Clinicians can then ask Elders about support available in the community and how to be sensitive to the current social context.

Before an assessment consider:

- Is the person off Country, away from family or disconnected? "Who is your mob?". What is the impact on their needs?
- Which staff gender is appropriate? Ask them beforehand and find an Aboriginal worker, if needed from another service.
- Aboriginal staff are essential in culturally safe sharing due to shared connections, cultural knowledge and lived experience.
- What is the person's preferred context (e.g., outdoors vs clinic), language, timing. Literacy – can they read the care plan? Connect - what do you have in common? It's relational and not transactional.

"The Noongar community is strong, it's small, and we support each other – but it's hard when you know them personally and you also know what's going on, especially with children involved. Outside work, you may have to pretend you don't know – it's hard." Josephine Ford, Director Clinical Services Planning, FSH

Under the MH Act, it is an obligation for clinicians to provide Aboriginal cultural needs wherever practicable. Even if another agency advise they have decided an Aboriginal worker is not required, the Aboriginal person's rights under the MH Act take priority as part of treatment and care.

OCP Clinical Helpdesk

clinical.consultant@ocp.wa.gov.au

Tel: 08 6553 0000

OCP Community of Practice

communityofpractice@ocp.wa.gov.au

Tel: 08 6553 0000

Resources:

1. [Information Sharing: Clinicians' Powers and Responsibilities MH Act 2014 – MHC](#)
2. [Chief Psychiatrists Standards of Clinical Care](#)
3. [National Safety and Quality Health Service Standards User Guide for Acute and Community Mental Health Services](#)