

Treatment and Care of Minors

The *Mental Health Act 2016* provides for the involuntary assessment, treatment and protection of persons, whether they are minors or adults. In most instances the same provisions apply for minors as for adults. However, there are a number of provisions which relate specifically to minors.

Who is a minor?

A minor is an individual who is under 18 years of age.

What does the Act say about the treatment and care of minors?

The Act includes a principle for minors, which requires persons acting under the Act to recognise and promote a minor's best interests. The principle states:

"... to the greatest extent practicable, a minor receiving treatment and care must have the minor's best interests recognised and promoted, including, for example, by receiving treatment and care separately from adults if practicable and by having the minor's specific needs, wellbeing and safety recognised and protected."

Can a minor consent to treatment?

The Act provides that the common law in relation to minors consenting to treatment is not affected. This means that a minor may consent to treatment if they have the maturity and capacity to do so. Similarly, a minor's parent may consent to the minor's treatment.

How does the 'less restrictive way' of treatment affect minors?

A treatment authority cannot be made if there is a 'less restrictive way' of treatment. For minors, this means parental consent is preferable to a minor receiving involuntary treatment. Where a minor's parent consents to treatment, a treatment authority cannot be made.

Can a minor receive electroconvulsive therapy (ECT)?

A minor may receive ECT but only if it is approved by the Mental Health Review Tribunal.

The Tribunal must consider the views of the minor's parents and the views, wishes and preferences of the minor when deciding whether or not to grant approval.

The Tribunal may give approval only if it is satisfied that:

- performing the therapy is in the person's best interests
- evidence supports the effectiveness of the therapy for the person's particular mental illness
- if the therapy has previously been performed on the person, the therapy is effective for the person, and
- evidence supports the effectiveness of the therapy for persons of the minor's age.

Does the Mental Health Review Tribunal have other obligations to minors?

The Tribunal must provide a lawyer to represent a minor at all hearings, at no cost.

The Tribunal must also ensure that where a proceeding relates to a minor, the membership of the Tribunal includes at least one psychiatrist with expertise in child and adolescent psychiatry.

Can a minor be treated in the high security unit?

A minor can only be treated in the high security unit if the chief psychiatrist has given prior written approval.

In deciding whether to grant approval, the chief psychiatrist must consider the minor's mental state

and psychiatric history, treatment and care needs, and security requirements.

The Tribunal must review a minor's detention in a high security unit:

- within 7 days of being notified by the chief psychiatrist, and at three monthly intervals thereafter, and
- on application by the minor or someone acting on the minor's behalf.

The Tribunal may also review the minor's detention at any time, on its own initiative.

The Tribunal must decide whether the minor should continue to be detained in the high security unit, or transferred to an authorised mental health service that is not a high security unit.