

21. SECTION 60: CONSENT TO ELECTROCONVULSIVE TREATMENT

The special provisions relating to electroconvulsive treatment (ECT) are contained in s.60 of the Act, which states:

“Notwithstanding anything in section 58 or section 59 of this act, no patient shall be required to accept electroconvulsive treatment for mental disorder unless-

- (a) the patient, having had the treatment explained to him or her in accordance with section 67 of this act, consents in writing to the treatment; or
- (b) the treatment is considered to be in the interests of the patient by a psychiatrist (not being the responsible clinician) who has been appointed for the purposes by the review tribunal.”

The Act envisages two circumstances in which ECT may be administered. The first requires that the patient consent in writing to the treatment (see s.60(a)). In order for any consent to be valid, the consenting patient must be competent to consent to ECT. The principles and practical guidance surrounding the seeking of informed consent are recognised and described by the Royal Australian and New Zealand College of Psychiatrists (RANZCP) in their Code of Ethics (see Principle 5). It should not be assumed that a patient who passively acquiesces is competent to consent. It is also important to recognise that capacity to provide consent may fluctuate, so that an incompetent patient may regain competence during a course of treatment. 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.

Because mental illness can impinge upon competence, it is desirable for competent patients to express views about the acceptability of possible future treatment options, including ECT. Where patients who have prior competently expressed views lose competence to consent, those views must be considered by responsible clinicians and by psychiatrists providing second opinions under s.60 of the Act. Section 5 of the Act requires that clinicians exercise powers conferred on them with proper respect for the person’s cultural identity and personal beliefs. It is important to note that s.67 of the Act states that a patient is entitled to receive an explanation of the expected effects of any treatment, including the expected benefits and likely side effects.

ECT can also be administered in circumstances where the patient is either not competent to consent, or refuses to consent, so long as the treatment is considered to be in the interests of the patient by a second psychiatrist, approved by the Mental Health Review Tribunal, who practices independently of the requesting clinical team (see s.60(b)). Although this potentially allows a patient’s competent refusal to be over-ridden by what is considered to be in the interests of the patient, good clinical practice will dictate that this only occurs in exceptional circumstances (see RANZCP Code of Ethics, Principle 5.10).