National project on sterilisation data collection practices

Report

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Office of the Public Advocate

Contents

About this report

This report is provided in response to a request from the Federal Attorney-General's Department to the Victorian Office of the Public Advocate (OPA Vic) to undertake a project on behalf of the Australian Guardianship and Administration Council (AGAC).

The *National project on sterilisation data collection practices* (the project) relates to sterilisation applications and medical procedures that result in sterilisation of persons with cognitive impairment across all state and territory jurisdictions.

This report contains an outline of the project objectives and outputs, background information, a description of the consultation process and outcomes. The outputs are contained as appendices to this report. A separate excel document is also provided as an appendix.

OPA Vic provided an interim progress report to the Federal Attorney-General's Department on 8 June 2015. OPA Vic's request for an extension to the final reporting deadline allowed for greater consultation with AGAC members as a group, and will encourage uptake and implementation of the project outputs. This is the final report on the completed project.

Project goals

The goals of the project were to:

- ensure Boards and Tribunals receive the required evidence when hearing a sterilisation matter
- enable consistent decisions to be made where possible
- enable Boards and Tribunals to be able to report back against the data indicators, and
- make possible inter-jurisdictional comparisons where applicable.

Project objectives and outputs

The objectives of the project were outlined in the project description and contract:

1. To standardise data collection practices of state and territory courts and tribunals regarding sterilisation applications and medical procedures that result in sterilisation, and determine the most appropriate place for annual publication.
2. To ensure healthcare professional reports provide the evidence required for decision-makers in sterilisation cases to apply the Decision-making principles articulated in the *Protocol for Special Medical Procedures (Sterilisation).* This should include advice related to processes to appropriately determine the capacity, wishes and medical needs of the patient, and alternative less invasive forms of treatment.
3. To provide guidance to potential applicants about how decisions are made in sterilisation cases, including information on factors the court or tribunal will consider, and issues it is not authorised to consider.

The outputs of the project were outlined in the project description and contract:

1. Agree on a consistent set of indicators for data collection on sterilisation applications and medical procedures that result in sterilisation across all state and territory jurisdictions. This should include a consistent approach to data on the number of applications, the nature of the procedures applied for, the age of patients, the nature of disabilities, alternate treatments considered, the categories of parties to the proceedings, the outcome of applications and any other relevant data. **(Appendix A, D)**

2. Develop a template for reports provided by healthcare professionals in sterilisation cases. This template should be customisable for use in each jurisdiction. **(Appendix B)**
3. Develop guidance resources for applicants. These resources should be customisable for use in each jurisdiction. **(Appendix C)**

The final project outputs are contained as appendices to this report. The appendices follow the same format, outlining the purpose, background, about the relevant output/resource, and the output/resource itself. While this report and the outputs will be made available on the AGAC website, context to each output is required given they may sometimes be referred to or viewed in isolation by Tribunals.

In due course relevant Tribunals may make some of these documents available on their websites in a customised format. These outputs will inform Board and Tribunal practice in this area from January 2016 onwards.

Appendices

A) Data indicators

B) Template Healthcare Professional Report

C) Template guidance resource for applicants

D) Template data record.

Glossary

The terminology used in this report is more relevant to some jurisdictions than others. The below definitions are provided to clearly define terms that may be unclear and for consistency purposes. In each output terminology would be customised according to the terminology used in each jurisdiction.

Applicant – the person making the application

Person – the person with disability or decision-making impairment to whom the application relates. Unless otherwise specified, the word “person” means both a child and an adult with a decision-making incapacity.

Primary disability of person – it is necessary to categorise primary disability for the purposes of data collection given the markedly different definitions contained in state and territory legislation. This is particularly relevant to the data record template (see Appendix A, D).

- **Physical** – generally relates to disorders of the musculoskeletal, circulatory, respiratory and nervous systems
- **Sensory** – impairments in hearing and vision
- **Psychiatric** – mental ill health, mental illness. Includes a wide range of behavioural and/or psychological problems
- **Neurological** – degenerative conditions/disorders such as dementia, multiple sclerosis or Huntington’s disease
- **Acquired brain injury** – brain injury caused by accident or trauma, by a stroke, a brain infection or other drugs
- **Intellectual** – includes intellectual and developmental disability which relate to difficulties with thought processes, learning, communicating, remembering information and using it appropriately, making judgments and problem solving.

Sterilisation – means a surgical intervention that results either directly or indirectly in the termination of an individual's capacity to reproduce.

Sterilisation procedures or sterilisation treatments – means those medical interventions which are known, or are reasonably likely in all circumstances, to render a person permanently infertile whether or not that is the purpose for which they are carried out. Such procedures include endometrial oblation, hysterectomy, tubal ligation, vasectomy, and may include procedures which form part of a process of gender reassignment.

Tribunal – the word tribunal is used in this report as a standard, general identifier to refer to each state and territory body, which has jurisdiction to decide capacity, guardianship and administration (financial management) matters. This includes all Boards and Tribunals with guardianship jurisdiction across Australia.

Introduction

The *National project on sterilisation data collection practices* (the project) relates to sterilisation applications and medical procedures that result in sterilisation of persons with cognitive impairment across all state and territory jurisdictions.

Given the gravity of a decision to sterilise a person, in every state and territory the power to consent to such a procedure is vested in an independent Board or Tribunal (and in some jurisdictions, also the Family Court in relation to children).[1] The Family Court of Australia declined to take part in this project.

In undertaking this project, OPA Vic consulted with Australian Guardianship and Administration Council (AGAC) Board and Tribunal members, in addition to medical practitioners with knowledge and experience in relation to the sterilisation procedure or treatment.[2] This process has resulted in the delivery of three outputs, contained as appendices to this report.

This report will provide background information to the project, an outline of the consultation process and the project outputs.

Background

The project request followed the delivery of the Senate Community Affairs References Committee for inquiry's final report *Involuntary or coerced sterilisation of people with disabilities in Australia* (2013).

The inquiry raised concerns about the level of sterilisation of people with disability, a lack of uniformity, and a lack of data to determine the practices in relation to sterilisation that exist across the Commonwealth, states and territories. The Committee also noted that the data available suggests there is great scope for creating more consistent processes and outcomes across jurisdictions and sought consistent data recording and reporting across all Australian jurisdictions.

The report made the following recommendation (25):

> The committee recommends that data about adult and child sterilisation cases be recorded, and reported, in the same way in each jurisdiction. Data records should include the number of applications made for a special medical procedure, the kind of special medical procedures specified in the application, the categories of parties to the proceedings (for example, parents, medical experts, public advocates), and the outcome of the case.[3]

This recommendation informed the development and delivery of this project, in addition to the project contract and description.

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[1] The law in relation to sterilisation of people with disability differs in all states and territories across Australia. Each jurisdiction's legislative requirements set out the decision making process of Tribunals in sterilisation matters. AGAC's *Protocol for Special Medical Procedures (Sterilisation)* (2009) (Protocol) and the principles enunciated in *Marion's Case* as well as the *Convention on the Rights of Persons with Disability,* although not are not part of the statutory basis upon which decisions are made, are considerations in Tribunal's decision making in relation sterilisation applications relating to people with disability.

[2] The Australian Guardianship and Administration Council (AGAC) provides a national forum for State and Territory agencies that protect adults with a decision-making disability through adult guardianship and administration. Members include Public Advocates and Public Guardians, members of Boards and Tribunals with guardianship jurisdiction, and Public and State Trustees.

[3] Senate Community Affairs References Committee for inquiry's final report *Involuntary or coerced sterilisation of people with disabilities in Australia* (2013) xiii.

Human rights concerns

OPA Vic acknowledges historically complex societal attitudes to the sexuality and fertility of people, in particular women, with disabilities. OPA Vic is cognisant that matters involving application for sterilisation of a person with disability are often extremely complex and raise issues that can involve controversial decisions.

The focus of OPA Vic in our own work in this area is to advocate for the human rights of people who are the subject of sterilisation applications.[4].

OPA Vic acknowledges the reality that involuntary and forced sterilisation of people with disability, particularly woman and children, still occurs outside of lawful authorisation processes, which likely constitutes a violation of the person's human rights.[5]

Consultation process

OPA Vic introduced this project to the full Australian Guardianship and Administration Council (AGAC) contingent at its biannual meeting on 19 March 2015 by way of a memo and discussion facilitated by John Chesterman, Director of Strategy, OPA Vic. The memo contained the purpose of the project, the background to the project, and the outlined the objectives and expected outputs. A consultation plan was outlined. Tribunal members were identified as key stakeholders in this project. OPA Vic requested assistance and consultation with Board and Tribunal members as crucial to the development and delivery of the expected outputs.

OPA Vic primarily consulted with Board and Tribunal members via email. Boards and Tribunal members received a detailed email outlining the different stages of the project and preliminary feedback was requested in relation to the proposed data indicators developed by OPA Vic in its early research (stage one). OPA Vic requested the contact details of relevant medical practitioners who could assist with stage two of the project (template healthcare professional report).

OPA Vic had ongoing contact with Tribunals throughout the consultation process. Feedback was sought at various staged on all three outputs.

First output: Data indicators

The first output of the project was to develop and endorse a consistent set of indicators for collecting data on sterilisation applications and medical procedures that result in sterilisation of persons with cognitive impairment across all state and territory jurisdictions.

The purpose of Tribunals endorsing data indicators is to promote consistency across jurisdictions in relation to uniform data collection, where possible.

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[4] Each jurisdiction's legislative requirements guide the decision making of Tribunals in sterilisation matters. AGAC's *Protocol for Special Medical Procedures (Sterilisation)* (2009) (Protocol) and the principles enunciated in *Marion's Case* as well as the *Convention on the Rights of Persons with Disability,* although not are not part of the statutory basis upon which decisions are made, are considerations in Tribunal's decision making in relation sterilisation applications relating to people with disability.

[5] Indeed as recently as 9 November 2014, the United Nations Human Rights Council (HRC) has raised serious concerns about human rights violations against Australians with disability during its review of Australia's human rights record, with one identified violation of being forced sterilisation: Australian Cross-Disability Alliance, Media Release, *United Nations: Serious Concerns about human rights violations against Australians with disability*, 9 November 2015.

First draft

OPA Vic sought feedback on the following draft data indicators:

- Number of applications
- Nature of procedures identified in applications
- Age of patients
- Nature of disabilities
- Alternate treatments considered
- Categories of parties to the proceedings (for example, parents, medical experts, other healthcare professionals, public advocates, public guardians)
- Outcomes of applications.

Feedback

Feedback provided by Board and Tribunal members suggested the following additional data indicators:

- Gender of person with disability
- Factors motivating the application (person's wishes, to treat disease, to control behaviour, for contraception, etc)
- Duration from receipt of application to final determination of the matter
- Appointment of separate representative or independent advocate for the person with a disability
- Other proposed additional/modified data indicators (proposed by New South Wales Civil and Administrative Tribunal, see below table for more detail)
- Who is the applicant (ie family member, medical practitioner, other)
- Nature of disability (the suggestion being that more detail is required)

General comments from Tribunals received May/June 2015

Tribunals acknowledged that certain kinds of data identified in the proposed indicators are relatively easy to ascertain, for example, number of applications, age of the person and gender of the person. However, it was expressed that some of the other suggested indicators may not be as straightforward to collect and compare. There was a recognition that these aspects may take a little more work in terms of the data collection processes for each jurisdiction. They may, for example, require a more detailed examination of written reasons for decision.

See Table 1, below, for a summary of feedback comments and OPA Vic's response to the feedback.

Table 1: Feedback from Tribunal members to proposed data indicators

Suggested data indicator and reason	OPA Vic response
1) Who is the applicant (ie family member, medical practitioner, other). Is the application contested or is there agreement about the appropriateness of the treatment between those involved in the person's life including the person (if able to provide a view). 2) Nature of disability needs to be addressed with some specificity, for example, "intellectual disability" is unlikely to be adequate. Evidence about the extent of the ID will be relevant to the person's ability to understand the nature of the proposed treatment, express a view about the proposed treatment etc. 3) Was evidence provided/sought as to the person's views if the person was capable of providing them: eg was evidence available as to the person's ability to understand the nature of the proposed treatment, views about the proposed treatment, understanding of the long term consequences, understanding of other treatment alternatives etc 4) Was evidence provided/sought as to whether any steps were taken prior to the application being made to address the issues that prompted the application.	1) The data indicator - categories to proceedings – will likely capture this data. The special procedure (sterilisation) application form could also capture this data. Modification of application forms may be required. 2) Evidence about the extent of the disability should be adequately addressed in the supporting documentation to the medical report under question 8 'Disability and effect on decision making.' For the purpose of the data indicator intellectual disability will be defined in a glossary to assist with data collection and recording. The report could require supporting evidence as to the extent of the person's disability and its effect on decision making. Further consideration as to the structure and content of the medical report template is required (including, for example, whether question 8 and 9 should be merged). More specific detail about the nature of disability may be captured in questions 9 and 10 of the medical report – (9) 'Capacity to consent to the procedure' and (10) 'Wishes of the person.' 3) This may be captured in question 10 'Wishes of the person' of the medical report. The report could provide more direction as to what information is sought, or required. It could be that the report requires supporting evidence as to the person's incapacity to consent to the procedure (question 9). 4) Further consideration as to the structure and content of the template medical report is required (including, for example, whether question 8 and 9 should be merged).

If the application is made on basis of concerns about management of menstruation, self-care etc., is there evidence of support being provided to educate/support person to manage these issues without the need for proposed treatment? If primary reason for proposed treatment is contraception (whether for a man or woman) is there evidence not only of other forms of contraception being explored but also education/support to the person. 5) In relation to factors motivating the application, is there any suggestion in the evidence that sterilisation is being proposed to protect against potential pregnancy in the event of possible sexual assault?	5) This would be captured in response to an additional question in the template medical report to capture this data 'Factors motivating application.' 6) Presumably this would be covered adequately in response to 'Factors motivating application.' This question will be added to the template medical report.
1) Suggested additional indicators: • Gender of person with disability • Factors motivating the application (person's wishes, to treat disease, to control behaviour, for contraception, etc) • Duration from receipt of application to final determination of the matter • Appointment of separate representative or independent advocate for the person with a disability	1) OPA Vic agrees with the suggested additional indicators.

Second draft

OPA Vic presented amended data indicators to the meeting of Heads of Lists and Boards on 21 October. These include:

- Number of applications
- Age and age bracket of person
- Gender of person
- Primary disability of person
- Applicant
- Proposed procedure
- Alternative treatment/s considered
- Other parties to the application (including whether Public Advocate/Guardian is a party)
- Primary reason for application
- Outcome of application
- Date application received
- Date application heard
- Date decision made.

Further feedback was invited, and provided, during and following the meeting from a number of Tribunal members. The data indicators were endorsed at the 21 October meeting, subject to final feedback from Tribunal members by 30 October 2015. Final feedback included the inclusion of a glossary of terms for both 'primary disability' and 'proposed procedure' to ensure consistency across state and territories. Other terms have also been included in the glossary, as outlined in Apendix A.

Questions remain around how and when the Federal Attorney-General's Department expects Tribunals to record and report on data and the authority for issuing any requirement to collect data, as well as who will be responsible for data collection and analysis. These are important issues. OPA Vic's suggestion that responsibility for collection and analysis lies with AGAC was broadly supported.

The endorsed data indicators are contained in Appendix A to this report.

Data record template

OPA Vic created an excel data record template to assist Tribunals to record and report on the endorsed data indicators.

OPA Vic considers that excel is the easiest way for data to be captured as it should remain fairly uniform between the different states and territories and could easily be provided on request as it can just be emailed to a liaison point. OPA Vic suggested that a locked excel spreadsheet could be made available on the AGAC members website for download and completion by Tribunals, prior to sending it back to AGAC for storage and collection.

The objectives of the data record template are to:

- assist Tribunals to record data indicators as endorsed during the project consultation phase
- ensure uniform data can be easily collected and reported on request, where possible
- assist with reporting annually to AGAC
- assist AGAC to analysis data and report on cross-jurisdictional comparison where possible.

Feedback

A draft data record template was sent to Tribunals, and OPA Vic received feedback from a number of Heads of Tribunals, in addition to registrars. Broadly, feedback suggested that the excel template would be easy to use, accessible on the variety of different IT systems used across jurisdictions and useful in capturing the indicated data when the application is lodged and then completed after finalisation of the matter.

Further description of the data record template, in addition to the final data indicators, is contained in Appendix A to this report. Appendix D is the excel template data record and is available separately. While this report and the outputs will be made available on the AGAC members website, context to each output is required given the outputs may sometimes be referred to in isolation.

The excel data record template document is attached separately to this report, however screen shots of the data record are included in as Appendix D to provide context. Instructions for use of the template are contained in Appendix A as well as the excel data record template on tab 1 (Instructions).

Recording and reporting

In relation to collecting and reporting on uniform data, OPA notes this would be done so where possible. Differences in legislation and process can make comparison difficult and risky. OPA Vic notes that any reporting would need to be done so in a way that notes the specific legislative criteria in each jurisdiction.

By way of a process example, in Victoria when an application is made, the Tribunal must give notice of the application to the person, the Public Advocate and any other person whom the Tribunal considers has a special interest in the affairs of the patient. The Tribunal refers most, if not all, applications for a special procedure to OPA with a request for investigation and advocacy. In WA OPA routinely investigates.

The AGAC member responsible for compiling, analysing and reporting on this data must be familiar with this report and take note of the variances in legislation and the risks associated with making cross-jurisdictional comparison in some instances. The AGAC *Protocol for Special Medical Procedures (Sterilisation)* (2009) (Protocol) contains a helpful compilation of the different legislative definitions in relation to sterilisation, and the comparative definitions of capacity and should be referred to when making any analysis or conclusion on the data recorded in the data record template.

Second output: Template Healthcare Professional Report

The second output of the project is the development of a template for reports provided by healthcare professionals to Boards and Tribunals in sterilisation cases (customisable for use in each jurisdiction).

The purpose of the template Healthcare Professional Report (HPR) is to assist Tribunals in exercising the power to consent to sterilisation procedures, and to promote consistency across jurisdictions when dealing with an application for sterilisation.

Similar healthcare professional reports are already available in some jurisdictions, for example in Tasmania and NSW. In other jurisdictions, like Victoria and others, there is a medical report template available.

OPA Vic anticipated that this output would be received cautiously by some Tribunals, given thorough processes are already in place in some jurisdictions.

In consultation, OPA Vic encouraged Tribunals to consider if current resources in their jurisdiction's would provide the data they needed to report against the endorsed data indicators. OPA Vic suggested that the HPR template could be used as a guide for amending, or creating, healthcare professional reports with a view to reporting on the data indicators.

OPA Vic notes that in some jurisdictions provision of a new or additional reporting requirement in the form of a customised version of the template HPR could be administratively burdensome. If the report is implemented, removal of any duplicating information, like that contained in required medical reports, would be necessary. Depending on the relevant jurisdictional legislation, Tribunals would likely still require a separate medical report to be completed by a specialist in the relevant area of medicine who is not involved in the person's care, and who has no interest in the outcome of the hearing. Given the HPR is a template, there would need to be work carried out to customise the HPR to comply with specific state or territory legislative requirements.

First draft

OPA Vic consulted Boards and Tribunals on an initial draft template healthcare professional report. OPA Vic requested the contact details of relevant medical practitioners with knowledge and experience in relation to the sterilisation matters.

Feedback

See Table 2, below, for a summary of feedback comments and OPA Vic's response to the feedback.

Table 2: Feedback from Tribunal members to draft template Healthcare Professional Report

Tribunals reviewed the first draft of the template medical report and their comments are noted in the table below. Some amendments were made to the template medical report prior to it being sent out to nominated medical practitioners for their feedback.

Suggested changes to report template	OPA Vic response
1) The draft template, other than it appears to cover the general information looked for by the tribunal. Acknowledges that it will be necessary to customise the template for each jurisdiction. Tribunal is interested in whether sterilisation is medically necessary, or if no other method of contraception could reasonably be expected to be successfully applied or if sterilisation is the only practicable way of overcoming problems with menstruation. Tribunal requires the expert medical witnesses to address the statutory criteria in their reports. Usually there are several expert medical reporters – one may be just providing input on capacity issues, another on general medical matters that could be impacted by the sterilisation procedure and the other reporters on whether sterilisation is justified.	1) Consideration of the various application forms operational in each jurisdiction is required. Determining the authority AGAC maintains to influence the structure and content of the Tribunal and Board special procedure application form (and not just the medical report) must be clarified.
1) Generally the term 'patient' is inappropriate in guardianship – 'person' or 'person with a disability' might be more acceptable. 2) Links to copies of the forms currently required for a hysterectomy were provided. Preference for this format was indicated.	1) OPA Vic supports this suggestion. The term 'person' will be used in the template report. 2) It may be that the template medical report would be somewhat an addendum to the application form, ie the medical report, and would not duplicate the detailed information requested on the application form (given the applicant would likely be different to the person completing the medical report). After further discussion with Tribunal and Board members, in addition to health care professionals, significant modification to the template medical report may be required.

	OPA Vic will need to consider the following matters: • the specific content of the template medical report • whether the template medical report may be better titled health care professional report to ensure clarity in its purpose and differentiate between different documents provided to Boards and Tribunals; and • the extent to which this project must consider the template report (whether titled medical or health care report), the supporting documentation in relation to the person's disability and capacity, and the structure and content of the special procedure application in each jurisdiction holistically. This would also require consideration of the various application forms operational in each jurisdiction, and determining the authority AGAC maintains to influence the structure and content of each Tribunal and Board special procedure application form (and not just the medical report).
1) Specific comments provided in relation to matters that require customisation for a number of jurisdictions was provided. Comments highlighted specific criteria and definitions in relation to who can be an applicant, the definition of a procedure for sterilisation, a lawful procedure, and what parties are involved in the consent process under this legislation.	1) The Tribunal should note this for its own purpose during the process of customisation prior to implementation.

Feedback from medical practitioners on second draft

OPA Vic consulted with a number of medical practitioners who have knowledge and experience in relation to sterilisation matters across Australia. OPA Vic also consulted on the second draft, having made amendments following initial consultation with Tribunal members. OPA Vic undertook two rounds of consultation with medical practitioners.

Feedback received was detailed and the template underwent significant change to cater for the comprehensive comments and suggested amendments. The overall view was that more questions should be contained in the HPR, resulting in the provision of more comprehensive information to the Tribunal. This is a different approach to OPA Vic's initial attempt at the template HPR.

Some feedback expressed the view that it is important for medical practitioners to have a deep understanding of how helpful the healthcare report is to the Tribunal in order to make a decision on the application.

A number of medical practitioners agreed that any HPR should assist the Tribunal to make decisions about:

1. the capacity of the person and
2. if the person lacks capacity, whether they lack the capacity to make a decision in relation to the proposed procedure; ie does the person understand the nature and effect of the proposed procedure?

A concern expressed related to the author of the HPR, and a suggestion that a medical practitioner, or several medical practitioners, may be best placed to complete the report. A psychologist, for example, may not have the necessary knowledge about the medical procedures and there were concerns about application being made independent of medical practitioner input. On the other hand, there would also be cases where the input of a psychiatrist or psychologist may be relevant.

As expected, given differences in legislation across jurisdictions specific comments received were limited in application. For example, one medical practitioner expressed a view that most professional reports approached the proposed procedure as being in the patient's best interests, and one which is reasonable for the tribunal to give consent. This is a very medical way of approaching treatment decisions.

In NSW, for example, the decision of the Tribunal to consent to a sterilisation application does not involve a best interests test, and the Tribunal may have little discretion when making decisions about sterilisation. For example, the NSW Civil and Administrative Tribunal (NCAT) must not give consent unless it is satisfied the procedure is necessary to prevent serious damage to health (or save the patient's life). A customised HPR to NSW jurisdiction must address this.

Medical practitioners highlighted the need for space to comment on the likely outcome for the person if the proposed procedure does not proceed, and/or to comment on the nature and severity of damage to the person's health the procedure is intended to prevent. Further, a separate question was suggested in relation to alternative less invasive forms of treatment, and why these have/ have not been tried, and whether they have/have not addressed the medical or health needs of the person.

All medical practitioners consulted made a variety of suggestions for additional questions to be contained in the template HPR. Many were keen for implementation in their own jurisdiction. OPA Vic explained that implementation lay with the relevant Tribunal.

In developing the third version of the template HPR OPA Vic considered it wise to include the comprehensive feedback with the view that Tribunals would customise the template accordingly for their purpose.

Third draft

OPA Vic tabled a final draft of the template HPR at the 21 October meeting of Board and Tribunal members. This followed amendment made to the second draft in response to feedback provided for the second time from medical practitioners.

Tribunals acknowledged that similar reports, although often less detailed, existed in some jurisdictions and further consideration was needed for future customisation opportunity.

Tribunals were in agreement that the questions contained in the template HPR would be useful for their own purposes; to both aid in their own understanding of the various medical matters/other relevant concerns, and to provide greater background information and context to their questioning of parties to applications for sterilisation.

OPA Vic cannot require that the template HPR report be customised for operational use in each jurisdiction. However OPA Vic remains convinced that this output will be useful for Tribunals in their own investigation and understanding of sterilisation matters. After further consideration by Tribunals, OPA Vic suspects that there may be a greater likelihood of implementation of some of the questions or format of the template HPR in similar reports designed by Tribunals.

The final template HPR is contained in Appendix B. Appendix B is presented in the consistent format, outlining the purpose, background, about the relevant output/resource, and the output/resource itself. This is to provide context to the output given it may sometimes be referred to or viewed in isolation.

Third output: Resources for applicants

The third output of the project is to create a template resource for applicants in sterilisation matters that can be customised to each jurisdiction's requirements.

The project description identified the goal of any resource available to potential applicants is to provide guidance to about how decisions are made in sterilisation cases, including information on factors the Tribunal will consider, and issues it is not authorised to consider.

Research confirmed that resources for applicants are made available by some Tribunals, however there is often a lack of specificity in relation to sterilisation matters in such resources. Resources currently available will provide some of the necessary general information, for example applications and proceedings under guardianship law in various jurisdictions. NCAT, for example, has published a variety of resources general to the application process broadly, and others more specifically related to sterilisation matters. The Victoria Civil and Administrative Tribunal (VCAT) makes available a 'Guide to assist you in completing the application for special procedure' to applicants and may only require minor amendment (if any).

OPA Vic sees this output as being useful to those jurisdictions in tailoring current resources to sterilisation matters. This would contribute to ensuring applicants are provided with the relevant information required to better enable Tribunals to report against the data indicators. OPA Vic sees this resource as being particularly useful for those jurisdictions where resources are not made available for applicants.

The objectives of the template resource are to:

- assist applicants in understanding decision-making processes and what is required in an applications for sterilisation of a person
- ensure boards and tribunals receive the required evidence to make consistent decisions
- enable boards and tribunals to report back against the data indicators to make inter-jurisdictional comparison where possible.

First draft

OPA Vic created a template document outlining the key information that should be contained in resources Boards and Tribunals make available for applicants to sterilisation matters.

This output is basic and contains core elements to include in any resources made available to applicants. OPA Vic gathered information from AGAC's protocol, in addition to some of the resources already made available by some jurisdictions. Differences in legislation made it difficult to provide any more than basic information in this output.

OPA Vic sought to identify in this output those sections/content that would likely need customising (indicated in blue text in Appendix C). Note this output is based on legislation in Victoria, however the resource is customisable.

The template provides examples of what guidance resources for applicants should contain; the principles by which Tribunals make decisions, the factors Tribunals consider and other process information.

Resources for applicants should ensure that applicants are informed about:

- how decisions are made in sterilisation cases
- factors the board or tribunal will consider, and issues it is not authorised to consider
- details of processes specific to sterilisation matters.

The template notes that the resource will need to be customised, as the different legislation in each jurisdiction will affect the content of resources for applicants, including:

- who can make an application to the Tribunal
- types of procedures requiring court or tribunal authorisation
- factors used to determine whether a sterilisation procedure may be authorised
- ease of access to legal representation and participation in the proceedings
- differences in defining for whom a court or tribunal order is required before that person may access a sterilisation procedure
- whether the board or tribunal has jurisdiction in relation to children, as the project and template resource do not consider the Family Court's jurisdiction.

Some jurisdictions, for example Western Australia, provide that a represented person, their guardian or the Public Advocate may apply to State Administrative Tribunal. In Victoria the person responsible for the person, or any person who, in the opinion of the Tribunals, has a special interest in the affairs of the person, can apply.

These differences will impact on the content of those resources available to applicants.

Feedback

This output was discussed in the 21 October meeting with Tribunal members, and further feedback was received following the meeting.

Most feedback related to the need to tailor any such resources for applicants to the particular jurisdiction to which the application relates.

Feedback suggested that references made to the UN *Convention on the Rights of Persons with Disabilities* and the AGAC *Protocol for Special Medical Procedures (Sterilisation)* be removed as these are not part of the statutory basis upon which decisions are made.

OPA Vic made some minor amendments to this draft output and the final version is contained in Appendix C to this report.

Final comments

Tribunals endorsed the data indicators contained in Appendix A, including the data record template, and supported those outputs contained in Appendix B, C and D. Tribunals broadly agreed that the outputs developed were relevant and thorough.

Tribunals will commence operational implementation of the data record template to assist to report against the data indicators in January 2016.

OPA Vic has agreed to be an advisor for this project, although ultimate data collection, reporting and any analysis (where relevant) will be the responsibility of AGAC. OPA Vic's offer also relates to the HPR template and the template resource for applicants.

Feedback suggests the HPR template and the template resource for applicants are less likely to be immediately implemented although Tribunals did indicate the usefulness of the outputs both for their own purpose in asking questions to parties to proceedings in sterilisation matters, and possibly in tailoring and updating, or creating, resources for applicants.

Tribunals agreed that the expectation to record and report on the data indicators would likely require amendment to application processes/resources and with time further identification of changes will become known and implemented.

Appendix A: Data indicators and template data record

Purpose

The first output of the National project on sterilisation data collection practices is to develop and endorse a consistent set of indicators for collecting data on sterilisation applications and medical procedures that result in sterilisation of persons with cognitive impairment across all state and territory jurisdictions.

The purpose of Boards and Tribunals endorsing data indicators is to promote consistency across jurisdictions in relation to uniform data collection, where possible.

An excel data record template has been designed to capture this data. The objectives of the data record template are to:

- assist Boards and Tribunals to record data indicators as endorsed during the Office of the Public Advocate's National project on sterilisation data collection practices;
- to ensure uniform data can be easily collected and reported on request and;
- to assist with reporting annually to the Australian Guardianship and Administration Council
- to assist the Australian Guardianship and Administration Council to analysis data and report on cross-jurisdictional comparison where possible.

A glossary of terms is included below to assist Boards and Tribunals to report data in a consistent way.

Background

Given the gravity of a decision to sterilise a person, in every state and territory the power to consent to such a procedure is vested in an independent Board or Tribunal (and in some jurisdictions, also the Family Court in relation to children).

Data indicators in relation to applications for sterilisation were developed and endorsed by the Australian Guardianship and Administration Council (AGAC) following the Federal Senate Community Affairs References Committee *Inquiry into Involuntary or coerced sterilisation of people with disabilities in Australia* (2013).

The inquiry raised concerns about the level of sterilisation of people with disability, a lack of uniformity, and a lack of data to determine the practices in relation to sterilisation that exist across the Commonwealth, states and territories. The Committee also noted that the data available suggests there is great scope for creating more consistent processes and outcomes across jurisdictions and sought consistent data recording and reporting across all Australian jurisdictions.

Data indicators

AGAC has endorsed the following indicators for data collection purposes:

- Number of applications
- Age and age bracket of person
- Gender of person
- Primary disability of person
- Applicant

- Proposed procedure
- Alternative treatment/s considered
- Other parties to the application (including whether Public Advocate/Guardian is a party)
- Primary reason for application
- Outcome of application
- Date application received
- Date application heard
- Date decision made.

These indicators have been endorsed by the Board and Tribunals members of AGAC.

Template data record

To enable Boards and Tribunals to easily collect this data an excel data record template has been developed and will be housed on the AGAC website. This data record template is contained on a separate document to this in excel format. These documents are to be read together. Instructions for use of the data record template are contained on tab 1 (Instructions) of the excel document (Template data record).

Glossary of definitions

The data indicators require definitions to ensure consistent data recording.

Applicant - the person making the application

Lawyer for adult with disability – refers a to separate representative where appointed for the person by the Board or Tribunal or a lawyer representing the person at the request of the person or another party

Other proposed procedure – refers to where a second proposed procedure has been proposed

Person - the person with disability, decision-making impairment or mental incapacity to whom the application relates, sometimes referred to as 'patient' in legislation.

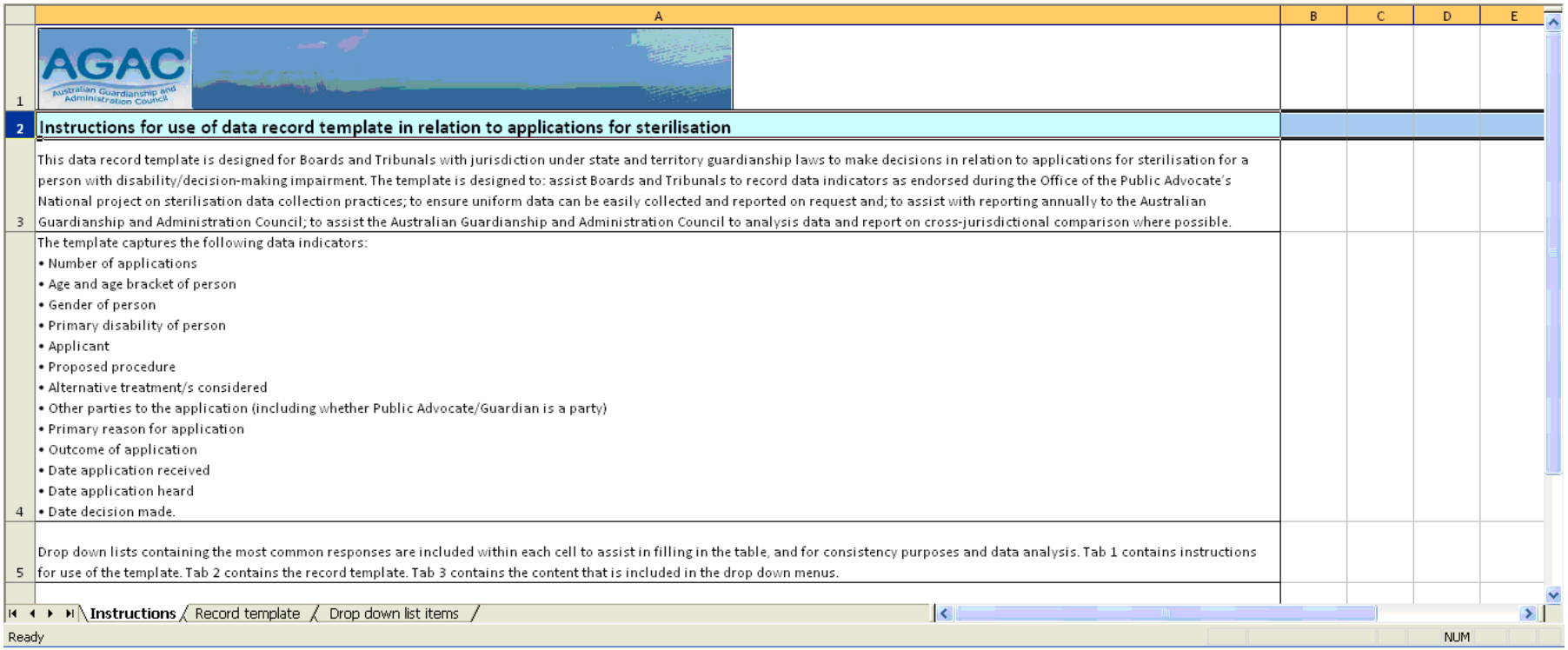
Primary disability of person – It is necessary to categorise primary disability to capture the different terminology that relates to disability as it differs markedly under the legislation in each state and territory. The categories under which Boards and Tribunals are to report are as follows:

- **Physical** - generally relates to disorders of the musculoskeletal, circulatory, respiratory and nervous systems
- **Sensory** - impairments in hearing and vision
- **Psychiatric** – mental ill health, mental illness. Includes a wide range of behavioural and/or psychological problems
- **Neurological** – includes degenerative conditions/disorders such as dementia, multiple sclerosis or Huntington's disease
- **Acquired brain injury** – brain injury caused by accident or trauma, by a stroke, a brain infection or other drugs
- **Intellectual** - includes intellectual and developmental disability which relate to difficulties with thought processes, learning, communicating, remembering information and using it appropriately, making judgments and problem solving.

Proposed procedure – refers to the sterilisation procedure being proposed in the application. The proposed procedure must be irreversible. Sometimes there may be two proposed procedures.

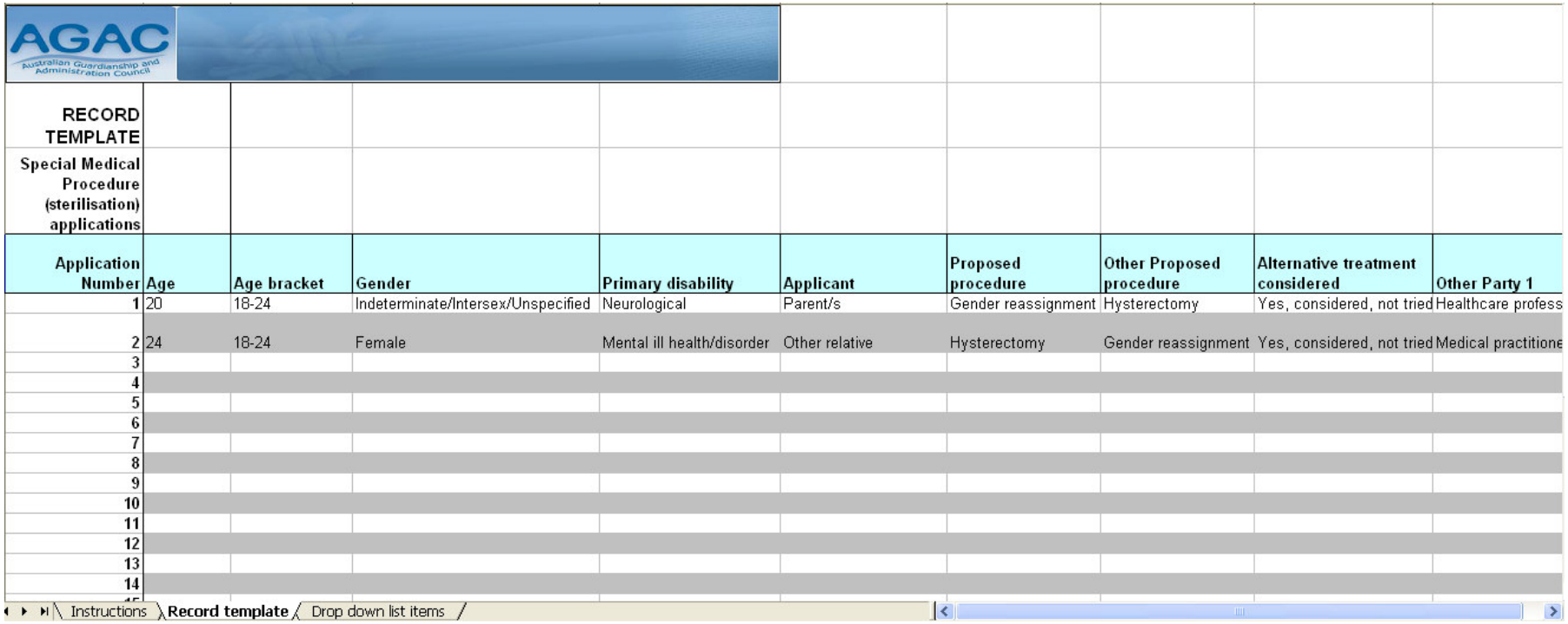
Sterilisation - a surgical intervention that results either directly or indirectly in the termination of an individual's capacity to reproduce.

Template data record (example)



Template data record (example)

Template data record (example)

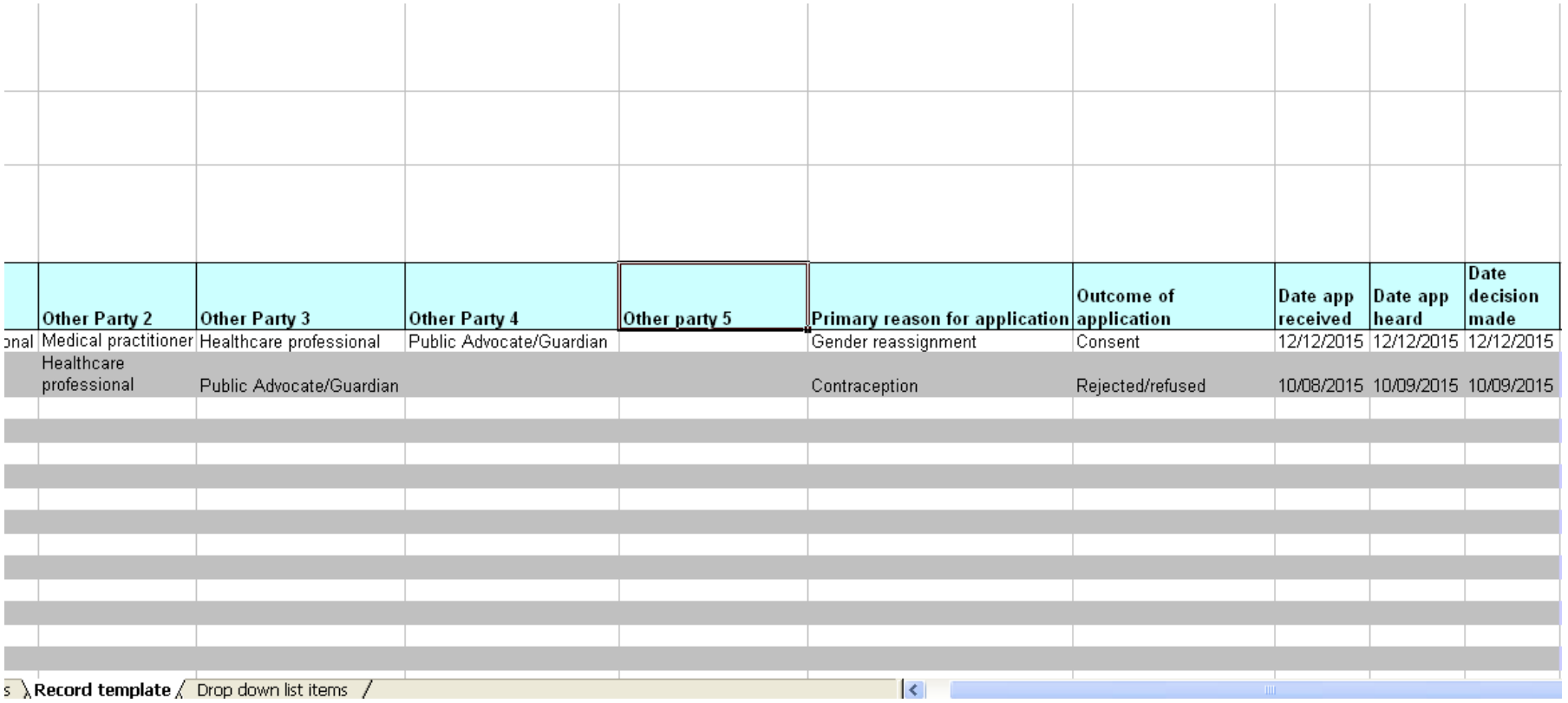


RECORD TEMPLATE									
Special Medical Procedure (sterilisation) applications									
Application Number	Age	Age bracket	Gender	Primary disability	Applicant	Proposed procedure	Other Proposed procedure	Alternative treatment considered	Other Party 1
1	20	18-24	Indeterminate/Intersex/Unspecified	Neurological	Parent/s	Gender reassignment	Hysterectomy	Yes, considered, not tried	Healthcare profess
2	24	18-24	Female	Mental ill health/disorder	Other relative	Hysterectomy	Gender reassignment	Yes, considered, not tried	Medical practitione
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									

Instructions | Record template | Drop down list items

Template data record (example)

Template data record (example)

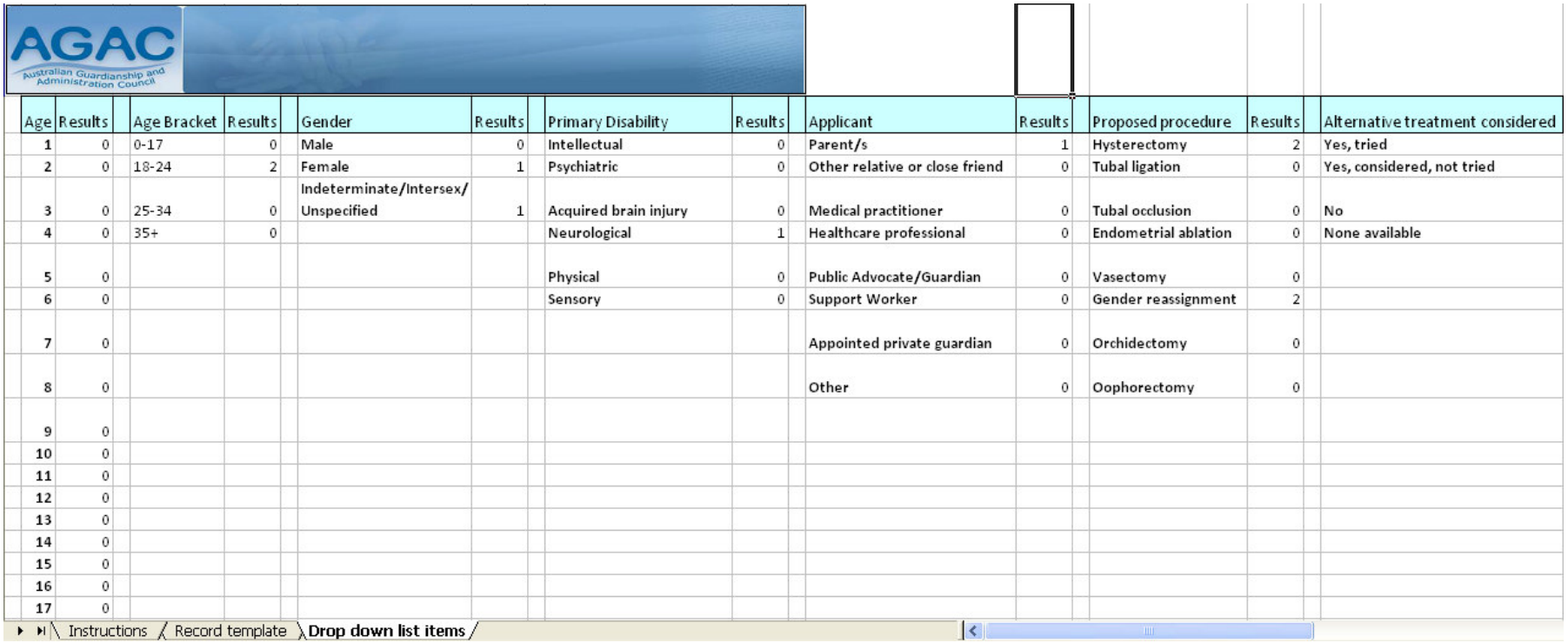


	Other Party 2	Other Party 3	Other Party 4	Other party 5	Primary reason for application	Outcome of application	Date app received	Date app heard	Date decision made
onal	Medical practitioner	Healthcare professional	Public Advocate/Guardian		Gender reassignment	Consent	12/12/2015	12/12/2015	12/12/2015
	Healthcare professional	Public Advocate/Guardian			Contraception	Rejected/refused	10/08/2015	10/09/2015	10/09/2015

s \ Record template / Drop down list items /

Template data record (example)

Template data record (example)



Age	Results	Age Bracket	Results	Gender	Results	Primary Disability	Results	Applicant	Results	Proposed procedure	Results	Alternative treatment considered
1	0	0-17	0	Male	0	Intellectual	0	Parent/s	1	Hysterectomy	2	Yes, tried
2	0	18-24	2	Female	1	Psychiatric	0	Other relative or close friend	0	Tubal ligation	0	Yes, considered, not tried
3	0	25-34	0	Indeterminate/Intersex/ Unspecified	1	Acquired brain injury	0	Medical practitioner	0	Tubal occlusion	0	No
4	0	35+	0			Neurological	1	Healthcare professional	0	Endometrial ablation	0	None available
5	0					Physical	0	Public Advocate/Guardian	0	Vasectomy	0	
6	0					Sensory	0	Support Worker	0	Gender reassignment	2	
7	0							Appointed private guardian	0	Orchidectomy	0	
8	0							Other	0	Oophorectomy	0	
9	0											
10	0											
11	0											
12	0											
13	0											
14	0											
15	0											
16	0											
17	0											

Instructions | Record template | Drop down list items

Template data record (example)

Template data record (example)

Results	Proposed procedure	Results	Alternative treatment considered	Results	Other Parties:	Results	Reason for application	Results	Outcome of application	Results
1	Hysterectomy	2	Yes, tried	0	Parent/s	0	Person's wishes	0	Consent	1
0	Tubal ligation	0	Yes, considered, not tried	2	Other relative or close friend	0	Treat illness	0	Dismissed	0
0	Tubal occlusion	0	No	0	Medical practitioner	2	Contraception	1	Rejected/refused	1
0	Endometrial ablation	0	None available	0	Healthcare professional	3	Control behavior	0	Withdrawn	0
0	Vasectomy	0			Public Advocate/Guardian	2	Prevent serious damage to health	0	Withhold consent	0
0	Gender reassignment	2			Lawyer for applicant	0	Gender reassignment	1	Ongoing	0
0	Orchidectomy	0			Independent Advocate	0	Improve personal and social wellbeing	0		
0	Oophorectomy	0			Independent children's lawyer	0	Best interests	0		
					Lawyer for adult with disability	0	To save the person's life	0		
					Support Worker	0				
					Appointed guardian	0				
					Other	0				

Instructions | Record template | **Drop down list items**

Template data record (example)

Appendix B: Template Healthcare Professional Report

Purpose

The second output of the National project on sterilisation data collection practices is the development of a template for reports provided by healthcare professionals to Boards and Tribunals in sterilisation cases (customisable for use in each jurisdiction).

The purpose of the Healthcare Professional Report (HPR) template is to assist Boards and Tribunals in exercising the power to consent to sterilisation procedures, and to promote consistency across jurisdictions when dealing with an application for sterilisation.

Background

This template Healthcare Professional Report (HPR) was developed following the Federal Senate Community Affairs References Committee inquiry into *Involuntary or coerced sterilisation of people with disabilities in Australia* (2013). The inquiry raised concerns about the level of sterilisation of people with disability, and sought consistent data recording and reporting across all Australian jurisdictions.

Given the gravity of a decision to sterilise a person, in every state and territory the power to consent to such a procedure is vested in an independent Board or Tribunal (and in some jurisdictions, also the Family Court in relation to children).

Boards and Tribunals must make a decision about the capacity of the person to consent to the proposed procedure, which is known, or is reasonably likely in all circumstances, to render a person permanently infertile whether or not that is the purpose for which they are carried out.

About the template

This template HPR should be used to guide Boards and Tribunals in the development of specific jurisdictional HPR with the purpose being to ensure all Boards and Tribunals receive the evidence required in order to make a decision on the application.

In some jurisdictions this will be an additional administrative process that may require removal of any duplicating information, like that contained in required medical reports. The Board or Tribunal will likely still require a separate medical report to be completed by a specialist in the relevant area of medicine who is not involved in the person's care, and who has no interest in the outcome of the hearing.

There may also be additional information that will be required as a result of specific state or territory legislative requirements.

Instructions for completing the Healthcare Professional Report for special procedure applications

The Healthcare Professional Report (HPR) is used by the Board/Tribunal as evidence in a hearing to determine whether it will consent to a special procedure for a person with disability/decision-making impairment.

The report must be completed by a healthcare professional, a psychologist or a medical practitioner, or a combination of healthcare professionals may need to complete the report.

The person making an application to the Board/Tribunal for consent to a special procedure for a person with disability/decision-making impairment (the applicant) is responsible for having the report completed by the healthcare professionals.

How to complete the HPR

When filling in the HPR, applicants should take the following steps:

- type or print clearly so the report can be photocopied
- ensure all relevant sections of the form are completed by healthcare professionals
- If space provided in any section of the report is insufficient, applicants should please type or write on a separate sheet and attach it to the HPR.
- photocopy the report and keep the copy as your own record.

If the applicant or healthcare professional is uncertain about filling in any part of the HPR, they should contact the Board/Tribunal. Further information on the HPR is also available on the Board/Tribunal's website.

The applicant should return the completed HPR to the Board/Tribunal staff member who requested that the HPR be completed. Alternatively, the HPR can be posted or delivered directly to the Board/Tribunal's offices with the application form (available on the Board/Tribunal's website).

After the HPR is submitted

The Board/Tribunal will conduct a hearing to decide if consent should be granted.

If you need further information about making an application contact the Board/Tribunal or visit the Board/Tribunal's website.

The Board/Tribunal will generally accept the HPR as documentary evidence without the need to call a healthcare professional as a witness at a hearing. A notice of invitation to attend the hearing may be sent, however, unless specifically notified, the healthcare professional is not required to attend.

If a healthcare professional is required to attend the hearing, they may be able to do so by telephone. Board/Tribunal staff members will discuss this with the applicant or healthcare professional before the hearing.

Or it may be that:

A healthcare professional is always expected to attend the hearing. Board/Tribunal staff members will discuss this with the applicant or healthcare professional before the hearing.

Healthcare Professional Report for special procedure applications

1. Date of Report	
Report Date:	

2. Name, gender and date of birth of person to whom application relates					
First Name:		Last Name:		Gender:	
Date of Birth:					

3. Name of applicant	
Applicant name:	

4. Name and position of healthcare professional providing this report			
First Name:		Last Name:	
Position:			
In what capacity do you know the person:			
How long have you known the person:			
How many times has the person consulted you:			
Date of last personal examination:			
Are you aware of person's medical history?			

5. Disability and effect upon decision making (Attach any relevant supporting documents for evidence of disability and the contact details of those relevant practitioners)	
Describe the person's disability	
How long has the disability been evident:	
Is the disability static, deteriorating, fluctuating or improving?	

Please provide details of the diagnosis and history of the person's disability and its effect on decision making

6. **Medical needs of person** (Attach any relevant supporting documents in relation to the person's medical condition and the contact details of those relevant practitioners)
What is the person's medical condition/s? Is the person's condition stable? (Include any relevant information about reproductive health of the person, including any difficulties in relation to menstruation and gender reassignment)
Are there any specific medical problems relating to being on long-term hormonal contraceptive medication?
Are there any medical or disability-related problems that could make you consider that pregnancy, labour and post-pregnancy states would be associated with serious medical illness or be life threatening?
If surgery is contemplated, are there particular peri-operative medical problems associated with the operation?
Would the patient have any risks being an inpatient in the hospital setting and how would these be addressed?

Is the patient's home situation such that any post-discharge surgical routine care or complications would be able to be monitored and addressed?
Do you think that the patient would benefit medically by having successful sterilisation?

7. Proposed Procedure (Attach any relevant supporting documents in relation to the proposed procedure and the contact details of those relevant practitioners)
Explain the proposed procedure which is intended or reasonably likely to have the effect of rendering the person permanently infertile.
Are there less restrictive procedures or alternative treatments that have been attempted, or considered, that would not render the person infertile? Would alternative or less invasive treatment be more appropriate to promote and maintain the person's health and wellbeing?
What are the risks and complications associated with the proposed procedure?
What are the risks for the person's health, personal and social wellbeing if the proposed procedure does not proceed?
What would be the impact on the person's life in general, and their family and/or carers if the proposed procedure does, or does not, proceed?

8. Capacity to consent to procedure (Attach any relevant supporting documents in relation to the person's capacity and the contact details of those relevant practitioners)
Can the person understand the nature and effect of the proposed procedure?
Discuss what indicators or evidence there is of the person's capacity to consent to the proposed procedure?
Is the person aware of all the choices available and does the person understand the consequences of each choice?

9. Wishes of person
Describe what the person has communicated to you
Is there any relevant past conduct that has made the person's attitude to this procedure clear?
Are there any documents such as an advance care plan, an enduring guardianship/attorney instrument or other documents which may indicate the person's attitude to this procedure?

Explain what others (family, other professionals) consider the wishes of the person to be.

10. Wishes of other relevant parties
Are there other interested parties who have views about the proposed procedure? If so, please explain those views

11. Person's attendance at the hearing					
Will the person be attending the hearing? If no, please provide details why					
Yes	☐	No	☐	Other	☐

Confidentiality				
The information in this report may be provided by you without the consent of the person about whom it is written. However, the Board or Tribunal may provide a copy of this report to the person about whom it is written or an 'interested party' to the proceedings. If you have any concerns about disclosure of information from the report, please indicate below.				
Have you discussed this report with the person?	Yes	☐	No	☐
Do you have concerns about disclosing the contents of this report to the person about whom it is written or any 'interested party'?	Yes	☐	No	☐
Please explain any concerns:				

Signature and acknowledgment									
I have provided this report in good faith and have reasonable and probable grounds for believing the report to be true.									
First name:		Last name:		Phone no:					
Address:									
Type of healthcare professional:									
Signature:			Date:						
Would you like to receive a hearing notice in respect to this matter?					Yes	☐	No	☐	

Privacy
If you wish to know how the Board or Tribunal may use this information, please refer to the privacy statement on the website

Office use Only			
Date report received		Date data entered	
Attach to Application Number			

Appendix C: Template guidance resource for applicants

Purpose

The third output of the National project on sterilisation data collection practices is to create a template resource for applicants in special procedure matters that can be customised to each jurisdiction's requirements.

The objectives of the template resource are to:

- assist applicants in understanding decision-making processes and what is required in applications for special procedures (sterilisation)
- ensure boards and tribunals receive the required evidence to make consistent decisions
- enable boards and tribunals to report back against the data indicators to make inter-jurisdictional comparison where possible.

Background

Because of the invasive and irreversible nature of sterilisation, laws in all states and territories provide that, unlike many medical procedures, if a person lacks capacity to understand the nature and effect of sterilisation, the person's substitute decision-maker for medical and dental treatment cannot make a decision about sterilisation.

Resources for applicants in sterilisation matters are made available by some boards and tribunals, however there is a lack of specificity in such resources, with most relating more broadly to consent for medical or dental treatment.

The term 'special procedures' may relate to matters other than sterilisation, including abortion and organ or tissue donation procedures, however, this project and resource relate only to sterilisation matters.

About the resource

Resources for applicants should ensure that applicants are informed about:

- how decisions are made in sterilisation cases
- factors the board or tribunal will consider, and issues it is not authorised to consider
- details of processes specific to sterilisation matters.

The template resource developed for this project was created by the Victorian Office of the Public Advocate and is based on legislation and requirements in Victoria.

It provides examples of what guidance resources for applicants should contain; the principles by which Boards and Tribunals make decisions, the factors Boards and Tribunals consider, and other process information.

The resource will need to be customised, as the different legislation in each jurisdiction will affect the content of resources for applicants, including:

- who can make an application to the Tribunal
- types of procedures requiring court or tribunal authorisation
- factors used to determine whether a sterilisation procedure may be authorised
- ease of access to legal representation and participation in the proceedings

- differences in defining for whom a court or tribunal order is required before that person may access a sterilisation procedure
- whether the board or tribunal has jurisdiction in relation to children, as the project and template resource do not consider the Family Court's jurisdiction.

Terminology

The terminology used in this template resource should be customised according to the terminology used in each jurisdiction.

Person - the person with disability or decision-making impairment to whom the application relates

Applicant - the person making the application

Sterilisation - a surgical intervention that results either directly or indirectly in the termination of an individual's capacity to reproduce

Special procedure - the name of the matter and sterilisation procedure to which the application relates.

Core elements of resources for special procedure applicants

(Text in blue can be customised to the jurisdiction)

What are special procedures?[6]

Special procedures include treatments which are intended to, or reasonably likely to, make a person permanently infertile. This is sometimes called sterilisation.

Who can consent to a special procedure?

Most people can make their own decision about a special procedure and can give consent.

If a person with disability/decision-making impairment cannot understand what the procedure is and what effect it will have, an application to the Board/Tribunal can be made to provide consent on that person's behalf.

Only the Board/Tribunal has the power to give consent to a special procedure for a person with a disability/ decision-making impairment who is incapable of giving consent.

Who can make an application?

An application for consent to a special procedure for a person with disability/decision-making impairment can be made by either:

- the 'person responsible'[7] for the person with disability/decision-making impairment
- any person who, in the opinion of the Board/Tribunal, has a special interest in the person with disability/decision-making impairment

How will the Board/Tribunal make a decision on the application?

In making a decision, the Board/Tribunal will consider:

- the Australian Guardianship and Administration Council's *Protocol for Special Medical Procedures (Sterilisation)* (2009), which can be downloaded at www.agac.org.au.

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[6] The title of the procedure/treatment to which the application relates differs across jurisdictions. In Victoria, a special procedure is 'any procedure that is intended, or is reasonably likely, to have the effect of rendering permanently infertile the person on whom it is carried out. In NSW it is special medical treatment.

[7] Include relevant definition or reference to information about who is a person responsible.

- the terms of the United Nations *Convention on the Rights of Persons with Disabilities*
- the principles contained in the *Guardianship and Administration Act 1986* (Vic).

In general these legislative principles are that:

(a) the means which is the least restrictive of a person's freedom of decision and action as is possible in the circumstances is adopted; and

(b) the best interests of a person with disability are promoted; and

(c) the wishes of a person with a disability are wherever possible given effect to.[8]

What should be included with the application?

- a Healthcare Professional Report (HPR) from the person's treating doctor (available on the Board/Tribunal's website)
- additional reports as required to be attached to the HPR (for specific sections)
- if required, a separate medical report from a specialist in the relevant area of medicine who is not involved in the person's care, and who has no interest in the outcome of the hearing.

What does the HPR contain?

The HPR requires information about:

(a) the person's capacity to consent to the proposed procedure

(b) the person's disability and effect upon decision making

(c) the reproductive health of the person (including, for females, any difficulties in relation to menstruation),

(d) the medical needs of the person

(e) the nature and purpose of the proposed procedure,

(f) whether the proposed procedure is necessary for the welfare of the person,

(g) the wishes of the person

(h) the wishes of other relevant parties, and

(i) any other tests set down in the legislation of the particular state or territory, such as:

  (i) why alternative and less invasive procedures would be, or have proven to be, inadequate; and

  (ii) the likely long term social and psychological effects of the procedure on the person; and

  (iii) whether scientific or medical advances are reasonably anticipated within the foreseeable future that will make possible either improvement in the person's condition or alternative and less drastic than a medical intervention such as sterilisation.

What information does the Board/Tribunal require?

The Board/Tribunal will require information about the person, the person's parents and carers, their social environment, and the person's medical background. The HPR will provide this information, in addition to a completed application form submitted to

[8] These are the general principles contained in AGAC's protocol. Specific tests for consent apply in each jurisdiction. For example, in NSW the Tribunal must be satisfied that the treatment is necessary to save the person's life or prevent serious damage to their health, before the Tribunal can consent.

the Board/Tribunal by the applicant, which is available on the Board/Tribunal's website.

An application that does not provide sufficient material may be rejected by the Board/Tribunal without a hearing, or the Board/Tribunal may require the applicant to submit further materials before the application will be listed for a hearing.

Making an application for consent to a special procedure

An applicant must complete and lodge the application for consent to a special procedure (sterilisation) form, which is available on the Board/Tribunal's website.

To lodge the application form:

- mail the form and attached documents to: Board/Tribunal's address
- fax the form and any attachments to: XXX
- deliver the form and attachments to: XXX

After making the application[9]

Once the Board/Tribunal has received all the necessary documents, it will conduct a hearing to decide if consent should be granted.

[9] The next stage in the process differs in each jurisdiction. Mostly, Tribunals publish general information in other resources regarding the process following submission of an application and can draw from this, or direct to the existing resource.