

# Amendments to the NSW Mental Health Act (2007)

## **FACT SHEET: Community Medical Practitioners**

The Mental Health Act 2007 (the Act) was amended on 31 August 2015 following a major review of the legislation. Information is provided in this fact sheet to assist community medical practitioners to understand relevant changes to the Act and is to be read in conjunction with the [Mental Health Act 2007 No. 8](#) and the [Mental Health Act Regulation 2013](#).

This fact sheet also restates other important provisions of the Act.

### **About the Act**

Under the Act, a person who is mentally ill or mentally disordered may be transported to and detained in a declared mental health facility to enable appropriate care and treatment to be provided, subject to certain conditions.

### **Use of the term 'serious harm' in the Act?**

A mentally ill person is someone who has a mental illness and, because of that illness, there are reasonable grounds for believing the person requires care and treatment in a mental health facility in order to protect them and/or others from serious harm (s14).

A Communique from the NSW Chief Psychiatrist was provided to Local Health Districts and Specialty Networks in 2014. It provides guidance to clinicians making involuntary treatment decisions, regarding the 'serious harm' criterion in the Act. The Communique states that, whilst *serious harm* is not defined in the Act, it is intended to be a broad concept that may include:

- Physical harm
- Emotional/psychological harm
- Financial harm
- Self-harm and suicide
- Violence and aggression, including sexual assault or abuse
- Stalking or predatory intent
- Harm to reputation or relationships
- Neglect of self
- Neglect of others (including children).

The Communique also states that, when making involuntary treatment decisions under the Act, clinicians should undertake a comprehensive assessment of the person, including review of the history of mental and physical illness, family history, psychosocial factors impacting on

the presentation, and evaluation of the risk of self-harm and harm to others. The assessment should include consideration of the harm that may arise should an illness *not* be treated.

### **Who is a mentally disordered person under the Act?**

A mentally disordered person is someone whose behaviour is so irrational that there are reasonable grounds for believing the person requires care and treatment in a mental health facility to protect them and/or others from serious **physical** harm (s15).

### **Changes to the Act place a greater focus on consumer recovery**

The term 'control' has been removed from the objects of the Act and greater emphasis has now been placed on promoting a consumer's recovery, including by encouraging clinicians to consider the consumer's views and wishes about their treatment (s3).

The principles for care and treatment in the Act have been amended so there is a greater focus on the recovery of consumers through, as far as possible:

- Supporting consumers to pursue their own recovery;
- Considering any special needs related to the disability or sexuality of a person;
- Providing developmentally appropriate services to individuals aged under 18 years;
- Recognising the cultural and spiritual beliefs and practices of Aboriginal and Torres Strait Islander people;
- Making every reasonable practicable effort to consider the views and expressed wishes of consumers when developing treatment and recovery plans; and
- Making every effort to obtain consumers' consent when developing treatment and recovery plans, to monitor their capacity to consent, and to support those who lack the capacity to understand their plans.

### **Changes to the initial detention of a person - Scheduling**

A Schedule 1 certificate enables a person to be taken against their will to a declared mental health facility (e.g. a mental health inpatient unit, a declared emergency department, or declared Psychiatric Emergency Care Centre) for a further mental health assessment (s19).

To issue a Schedule 1 certificate, a medical practitioner must:

- Personally examine or observe the person immediately or shortly before completing the certificate;
- Form the opinion that the person is either a 'mentally ill' person or a 'mentally disordered' person;
- Be satisfied that no other appropriate means for dealing with the person is reasonably available, and that involuntary admission and detention are necessary;
- Not be a designated carer, the principal care provider or a near relative of the person.

A completed Schedule 1 is valid for up to 5 days for a 'mentally ill person' and up to 1 day for a 'mentally disordered person'.

**When forming an opinion as to whether a person should be taken to and detained in a declared mental health facility for further assessment, medical practitioners should consider the advice provided in this Fact Sheet in relation to the Communique on 'serious harm'.**

The Act has been amended to explicitly state that a medical practitioner may examine or observe a person via audio visual link for the purposes of writing **Part 1 of Schedule 1** (s19A).

The use of an audio visual link for these assessments is subject to the following conditions:

- It may only occur where it is not reasonably practicable to personally examine or observe the person (s19A(1));
- The medical practitioner must be satisfied that they are able to examine or observe the person with sufficient skill and care so as to form the required opinion about the person (s19A(2)).

### **Police assistance**

Section 19(3) provides for police assistance to be sought in the detention and transport of the person if there are **serious** concerns relating to the safety of the person or others without police assistance.

Medical practitioners are to complete **Part 2 of Schedule 1** when seeking police assistance in taking a person to a declared mental health facility.

### **Mental Health Forms**

Some Mental Health Act forms have been updated and new forms have been developed (some of which relate to the Mental Health Regulation 2013).

**Changes have been made to the Schedule 1 certificate and this new form must be used:** Schedule 1. Medical Certificate as to Examination or Observation of Person (NH600900A) to be found at: [www.health.nsw.gov.au/mentalhealth/Pages/legislation.aspx](http://www.health.nsw.gov.au/mentalhealth/Pages/legislation.aspx)

All current **Mental Health Act forms** and relevant documents are available and can be downloaded for printing from the NSW Ministry of Health website:

[www.health.nsw.gov.au/mentalhealth/Pages/legislation.aspx](http://www.health.nsw.gov.au/mentalhealth/Pages/legislation.aspx)

### **Relevant links**

- The **Memorandum of Understanding - Mental Health Emergency Response 2007 between NSW Health, Ambulance Service of NSW and between NSW Police Force** can be found at: [www.health.nsw.gov.au/mentalhealth/Pages/partnerships-gd.aspx](http://www.health.nsw.gov.au/mentalhealth/Pages/partnerships-gd.aspx)
- The **Mental Health Act 2007 Guidebook**, which provides practical information to mental health practitioners, carers, and those who provide support and advice to consumers, is being updated. Once completed, the Guidebook will be available on the NSW Ministry of Health website: [www.health.nsw.gov.au/mentalhealth/Pages/legislation.aspx](http://www.health.nsw.gov.au/mentalhealth/Pages/legislation.aspx)