

Amendments to the NSW Mental Health Act (2007)

FACT SHEET: Consumers

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 consumers to understand the changes to the [Mental Health Act 2007 No. 8](#) and the [Mental Health Act Regulation 2013](#). This fact sheet also provides information about some other important parts of the Act.

For consumers who are under 18 years of age, please see the Young People Fact Sheet.

About the Act

Under the Act, a person who is mentally ill or mentally disordered may be detained in a mental health facility to enable appropriate care and treatment to be provided, but only if certain conditions are met.

Who is a mentally ill person under the Act?

If you are a person with a mental illness and there are reasonable grounds for believing that, because of that illness, you require care and treatment in order to protect you and/or others from serious harm, you may be detained in a mental health facility.

Who is a mentally disordered person under the Act?

If you are a person who is mentally disordered, you are someone whose behaviour is considered to be so irrational that there are reasonable grounds for believing you require involuntary care and treatment in a mental health facility to protect you and/or others from serious physical harm.

Who is a mental health consumer?

A mental health consumer is a person who has a lived experience of a mental illness or mental disorder, and/or a person who is receiving treatment from a mental health service (either voluntarily or involuntarily).

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.

The principles for care and treatment in the Act have been changed so there is a greater focus on your recovery. Your treating team should now, as far as possible:

- Support you to pursue your own recovery;
- Make every effort to obtain your informed consent when



developing treatment and recovery plans, monitor your capacity to consent, and support you if you lack the capacity to understand these plans;

- Consider your special needs related to a disability or your sexuality;
- Provide developmentally appropriate services to you if you are under 18 years of age; and
- Recognise your cultural and spiritual beliefs and practices if you are Aboriginal or Torres Strait Islander.

Primary carers and designated carers

The term 'primary carer' in the Act has been changed to 'designated carer'. There has been no change to the definition. Any primary carer nominations that were current as at 31 August 2015 remain in force, although they are now known as designated carer nominations.

Designated carers are nominated by you in most cases, although in some cases they are identified by your treating team according to a hierarchy that is set out in the Act. Under the changes to the Act, you are now able to nominate up to two designated carers in most cases.

Treating clinicians should take all reasonably practicable steps to ensure that, if you are eligible and already have a designated carer, you are offered the opportunity to nominate an additional designated carer. The information provided to your designated carers is an important means of ensuring on-going support for your self-directed recovery.

Principal care provider

A new type of carer has been added to the Act, the 'principal care provider'. The principal care provider is the person who is primarily responsible for providing day to day support and/or care to you, but is not wholly or substantially paid on a commercial basis to provide that care. Your principal care provider may also be your designated carer.

Your treating team determines who is your principal care provider.

The Principal Care Provider has similar rights to notice and information about you as your designated carer. A person cannot be your principal care provider if you have excluded them from being given information about you. In addition, your treating clinicians are not required to give information to your principal care provider, or to appoint a person as your principal care provider, if they reasonably believe that to do so may put you or your principal care provider at risk of serious harm.

Voluntary patients

You are a voluntary patient if you have agreed to be admitted to a mental health facility, or if you are under guardianship and have been admitted at the request of, or with the consent of your guardian.

If you are a voluntary patient, you can now be detained for up to two hours to allow a medical practitioner or accredited person (see box below) to carry out an assessment to determine if you are mentally ill or mentally disordered.

An Accredited Person is a suitably qualified senior mental health practitioner who is appointed under section 136 of the Act by the Secretary of the Ministry of Health to fulfil particular responsibilities. To be appointed, the person needs to be a senior mental health clinician with at least five years' experience who has been nominated by their Local Health District or Health Network.

The Act has been changed to explicitly state that an accredited person or medical practitioner may undertake an initial assessment of you, using an audio visual link. The assessor can only use an audio visual link if they are satisfied that they are able to examine or observe you with sufficient skill and care so as to make the required assessment of you.

The Act has been changed to require that all voluntary patients must now be given a statement of rights. This Statement of Rights for Voluntary Patients must be given to you as soon as possible after you have been voluntarily admitted to a mental health facility.

See: www.health.nsw.gov.au/mentalhealth/Pages/legislation.aspx. This Statement outlines your legal rights and entitlements under the Act.

If you are a voluntary patient, your status must be reviewed by the Mental Health Review Tribunal (see box below) at least once every 12 months. At this review, the Tribunal must now determine if you are likely to benefit from further care or treatment as a voluntary patient.

The Mental Health Review Tribunal is a specialist quasi-judicial body constituted under the Mental Health Act 2007. It has a wide range of powers that enable it to conduct mental health inquiries, make and review orders, and hear appeals about the treatment and care of people with a mental illness.

Involuntary patients

You are an involuntary patient if you have been detained in a declared mental health facility following a series of examinations where the severity of your mental illness and the risk of harm to yourself and/or others has been assessed.

The involuntary patient Statement of Rights must be given to you as soon as practicable after you have been admitted to a mental health facility. This form has recently been changed to recognise that you have the right to see an Official Visitor (see box below), to seek discharge from a mental health facility and to appeal to the Tribunal against any refusal to discharge you.

Official Visitors are members of the community who are appointed to visit people in mental health inpatient facilities in NSW to check on the way in which they are being treated. They also receive and refer complaints made to them by those receiving care and treatment in these facilities or their carers, and they are available to assist individuals on community treatment orders.

If you are an involuntary patient and you have the capacity to consent to a proposed surgical operation, but decide not to consent, the Secretary of NSW Health and the Tribunal can no longer override your decision.

If you are detained and have been transferred to a non-mental health facility to receive non-mental health treatment, you now have the right to notify the medical superintendent of that health facility that you wish to see an Official Visitor. The medical superintendent must notify the Principal Official Visitor of your request. Your designated carer(s) and principal care provider are also able to request to see an Official Visitor on your behalf.

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 a declared Psychiatric Emergency Care Centre) for a further mental health assessment.

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'.

The Act has been amended to explicitly state that an accredited person (see description page 3) or a medical practitioner may examine or observe a person via audio visual link for the purposes of writing a Schedule 1.

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; and
- The accredited person or 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.

The views of your carers, relatives, friends, treating health professionals and relevant emergency personnel must now where ever possible, be sought and considered by clinicians when undertaking an assessment of you, or when determining whether to discharge you.

Community treatment orders

The Tribunal can make a Community Treatment Order (CTO) which allows for a mental health service to provide you with involuntary care when you are living in the community. If you

breach a CTO, by not complying with a condition of the CTO, you may be taken to a mental health facility and given appropriate treatment, including medication. CTOs can generally be made for up to six months. It is possible for a person to have more than one consecutive CTO.

When the Tribunal is hearing an application for a CTO, it is now able to waive the 14 day notice requirement if it decides it is in your best interests to hear your matter earlier. However, you must still be given notice of an application for a CTO.

The Tribunal now has the authority to make a CTO at an appeal hearing against refusal to discharge you and to delay your discharge for up to 14 days.

Your treating team is now required to consult with you, and if reasonably practical to do so, with your designated carer(s) and principal care provider before revoking a CTO.

Your treating team must now notify the Tribunal in writing if they revoke your CTO or decide not to apply to the Tribunal for a further CTO.

Your treating team is now also required to take all reasonable steps to notify your designated carer(s) and principal care provider in writing, if:

- Your CTO is varied or revoked by the mental health service or the Tribunal;
- An application is made for a further CTO; or
- Your treating team decides not to apply for a further CTO.

Mental Health Forms

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

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

Relevant links

- Information on the **Official Visitors Program** can be found at: www.ovmh.nsw.gov.au
- Information on the **Mental Health Review Tribunal** can be found at: www.mhrt.nsw.gov.au/the-tribunal/
- 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 from the NSW Ministry of Health website: www.health.nsw.gov.au/mentalhealth/Pages/legislation.aspx
- The Mental Health Association NSW offers a **directory of Mental Health Services** in NSW: www.wayahead.org.au
- For further **consumer information** go to: www.being.org.au