

Amendments to the NSW Mental Health Act (2007)

FACT SHEET: Accredited Person

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 Accredited Persons to understand changes to their responsibilities under the Act and should be read in conjunction with the [Mental Health Act 2007 No. 8](#) and the [Mental Health Act Regulation 2013](#).

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*.

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.

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 consumers' recovery, including by encouraging clinicians to facilitate the involvement of consumers and carers in decisions about care and treatment (s3).

The principles for care and treatment in the Act (s68) have been amended so that there is a greater focus on the recovery of consumers through, as far as practicable:

- Supporting consumers to pursue their own recovery;
- Considering any special needs related to the disability or sexuality of the person;
- Providing developmentally appropriate services to consumers aged under 18 years;
- Recognising the cultural and spiritual beliefs and practices of Aboriginal persons and/or Torres Strait Islanders;
- Making every reasonably practicable effort to consider the views and expressed wishes of consumers when developing treatment and recovery plans; and
- Making every reasonably practicable 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 provisions for the initial detention of a person (Schedule 1)

The Act has been amended to explicitly state that an accredited person or 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 can only occur if the following conditions are met:

- Where it is not reasonably practicable to personally examine or observe the person(s19A(1)); and
- The accredited person or medical practitioner must be satisfied that they are able to examine or observe the person by audio visual link with sufficient skill and care so as to form the required opinion about the person (s19A(2)).

Changes to the ongoing detention of a person at a mental health facility (section 27A assessment)

Where a person has been initially detained in a mental health facility, the Act requires two (and in some cases three) further examinations for the person's detention to be continued (s27 and s27A).

The Act now allows an accredited person, to personally observe and examine a person for the purposes of ongoing detention, subject to certain conditions being met (s27A). An accredited person can only undertake such assessments where:

- An authorised medical officer or other medical practitioner is unavailable to do so; and
- They have been authorised to do so by the medical superintendent of the mental health facility; and
- The accredited person carries out the assessment in person (the examination may not be undertaken via audio visual link).

The accredited person must document the results of this examination on the amended Form 1 - Clinical report as to state of a detained person. See: <http://www.health.nsw.gov.au/mentalhealth/Pages/legislation.aspx>

If reasonably practicable, an accredited person must seek the advice of a psychiatrist before making a determination as to whether the person is a mentally ill or mentally disordered person (s27A(4)). The psychiatrist is not required to examine or observe the person.

The Act now also requires assessing clinicians to seek and consider the views of carers, relatives, treating health professionals and relevant emergency services personnel, where practicable, when making determinations about a person's potential need for ongoing involuntary treatment, and when considering the person's discharge (s72B).

If a person has been detained in a mental health facility on the basis of a Schedule 1 assessment undertaken by an accredited person, the accredited person is not permitted to undertake a s27A examination of that person for ongoing detention (s28(2)). However, the accredited person may provide and corroborate information relevant to such further examinations.

Primary carers and designated carers

The term 'primary carer' in the Act has been changed to 'designated carer' (s71). 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.

Consumers can now nominate up to two designated carers.

Treating clinicians should take all reasonably practical steps to ensure that consumers who are eligible and who already have a designated carer, are offered the opportunity to nominate an additional designated carer under s72. The new form: Nomination of Designated Carer(s) should be used. www.health.nsw.gov.au/mentalhealth/Documents/Legislation/NH606713a.pdf

Principal care provider

A new type of carer has been added to the Act, the 'principal care provider' (s72A). The principal care provider is the individual who is **primarily responsible** for providing support or care to a consumer (other than wholly or substantially on a commercial basis). The principal care provider may also be the designated carer of the person, and has a similar right to notice and information about a consumer as designated carers (s78).

An Authorised Medical Officer or the Director of Community Treatment may determine who the principal care provider is (s72A(2)), and should use the new form: Identification of Principal Care Provider. www.health.nsw.gov.au/mentalhealth/Documents/Legislation/NH700091a.pdf

It should be noted that a person cannot be identified as the principal care provider if they have been excluded by the consumer (s72A(3)) from being given notice or information.

However treating clinicians are not required to give notice or information to the principal care provider, or to appoint a person as the principal care provider if they reasonably

believe that to do so may put the consumer or the principal care provider at risk of serious harm (s72A(4)).

Nomination of carers

A detained person may nominate up to 2 people to be their designated carers. These nominations must be in writing and given to an authorised medical officer at a mental health facility. The authorised medical officer once notified, is to give effect to the nomination.

Notifications to carers

Accredited persons should be aware that under s75 of the Act, an authorised medical officer must, within 24 hours after detaining a person in a mental health facility, take all reasonably practicable steps to notify the designated carer(s) and the principal care provider (if the principal care provider is not a designated carer), to advise them that the person is detained in the facility.

Where the initial detention is through assessment by an Accredited Person, Local Health Districts and Specialty Networks should work out a local process to ensure carer nominations are sought and the required notifications to carers occur.

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).

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

Training on the Amendments to the Act

Training, including online and face-to-face is being provided throughout NSW by the NSW Institute of Psychiatry. It is anticipated that online training will be available in 2016. For further information, contact the Institute on 02 9840 3833 or at www.nswiop.nsw.edu.au

Relevant links

- Information on the **Mental Health Review Tribunal** can be found at: www.mhrt.nsw.gov.au/the-tribunal/
- 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
- 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