

## Amendments to the Mental Health Act 2007

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**Summary** The Mental Health Act 2007 has been reviewed and amended by the Mental Health Amendment (Statutory Review) Act 2014. This Information Bulletin outlines the key changes to the Mental Health Act 2007.

**Author Branch** Mental Health and Drug and Alcohol Office

**Branch contact** Mental Health and Drug & Alcohol Office 02 9391 9953

**Applies to** Local Health Districts, Board Governed Statutory Health Corporations, Chief Executive Governed Statutory Health Corporations, Specialty Network Governed Statutory Health Corporations, Affiliated Health Organisations, Public Health System Support Division, Community Health Centres, Government Medical Officers, NSW Ambulance Service, Public Health Units, Public Hospitals

**Audience** Administration, clinical mental health staff, emergency departments, mental health facilities

**Distributed to** Public Health System, Divisions of General Practice, Government Medical Officers, Health Associations Unions, NSW Ambulance Service, Ministry of Health, Private Hospitals and Day Procedure Centres, Tertiary Education Institutes

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## AMENDMENTS TO THE MENTAL HEALTH ACT 2007

### PURPOSE

The *Mental Health Act 2007* recently underwent a review and the *Mental Health Amendment (Statutory Review) Act 2014* was passed by Parliament in November 2014. This Information Bulletin sets out the amendments to the *Mental Health Act 2007*.

### KEY INFORMATION

The key changes to the *Mental Health Act 2007* are outlined below:

#### **Recovery principles:**

- Includes statements in the principles for care and treatment that:
  - Clinicians should make every effort to take into account consumers' views and wishes about their treatment, to obtain consumers' consent for treatment and recovery plans, and to support consumers who lack the capacity to consent to understand those plans
  - Consumers should be supported to pursue their own recovery
  - People under 18 years of age should receive developmentally appropriate services
  - The cultural and spiritual beliefs and practices of Aboriginal and Torres Strait Islanders should be recognised
  - Special needs relating to disability or sexuality are to be recognised in care and treatment.
- Removes the term 'control' from the objects of the Act and replaces this with an object to recognise that treatment is for the purpose of protecting the consumer or other persons from harm
- Adds to the objects the notion of promoting the recovery of persons who are mentally ill or mentally disordered.

#### **Consumer rights:**

- Requires that voluntary patients be given a statement of rights
- Amends the involuntary patient statement of rights (Schedule 3) to state that consumers have the right to see an official visitor and the right to request discharge at any time and to appeal to the Mental Health Review Tribunal (MHRT) against any refusal to discharge them
- Requires that voluntary patients be reviewed by the MHRT at least once every 12 months of continuous residence in a mental health facility
- Requires the MHRT, when undertaking a voluntary patient review, to consider whether the patient is likely to benefit from further care or treatment as a voluntary patient

- Removes the ability of the Secretary of Health to consent to a surgical operation on an involuntary patient, where that patient has capacity but has not provided consent to the operation
- Enables a person under the Act who is in a non-mental health facility for medical treatment to request to see an official visitor.

### **Initial involuntary assessment processes:**

- Introduces a requirement that assessing clinicians seek and consider the views of carers, family members, treating health professionals and relevant emergency services personnel when making determinations under Form 1 about a person's potential need for ongoing involuntary treatment
- Allows authorised medical officers to undertake Form 1 assessments at a declared mental health facility of which they are not an employee
- Allows accredited persons (nominated by the Medical Superintendent for a specific facility) to undertake Form 1 assessments face to face only where an authorised medical officer or other medical practitioner is unavailable
- Makes it clear that Schedule 1 and Form 1 assessments may be undertaken by audio-visual, subject to certain criteria being met.

### **Carers:**

- Replaces the term 'primary carer' with 'designated carer' and allows consumers to nominate up to two designated carers who are entitled to receive certain information about the consumer, subject to restrictions
- Introduces the concept of a 'principal care provider' (the person who is primarily responsible for providing support or care for a consumer) and allowing this person to be provided with similar information about the consumer to the designated carer.

### **Young persons:**

- Requires that persons under 16 years of age be provided with legal representation for all Mental Health Review Tribunal (MHRT) hearings unless the young person refuses such representation or the MHRT determines that it would be in the person's best interests to proceed with a hearing without representation
- Requires that, where it is proposed to provide electroconvulsive therapy (ECT) to a person under 16 years of age, the person must be assessed by a psychiatrist with expertise in child and adolescent psychiatry, and the matter must go before the MHRT for consideration, even when the young person has capacity and has consented to ECT.

### **Community treatment orders (CTOs)**

- Removes the requirement for a 14 day notification period for an application for a CTO on a person who is living in the community, if the MHRT decides that it is in the best interests of the person that the application be heard earlier
- Requires the Director of Community Treatment to consult the affected person and their carers before revoking an order

- Requires the Director of Community Treatment to notify the Tribunal in writing if the Director revokes a CTO or decides not to apply to the tribunal for a further order.
- Allows the MHRT to make a CTO at an appeal hearing against a refusal to discharge a consumer.

### **Detaining a person**

- A person may be detained involuntarily for up to two hours to allow an authorised medical officer to carry out an assessment to determine whether the patient is a mentally ill person or mentally disordered person.
- The length of time that a mental health facility is able to detain a person pending apprehension by a police officer has been extended to a period not exceeding **two** (2) hours.

### **Forms and documentation**

- A list of all the forms and documents used in the day-to-day operation of the Act is provided below (**Attachment A**). Many of these have been updated, and nine new forms have been developed (some of which exist in the Mental Health Regulation 2013), as highlighted in the attached list.
- A list of all forms and documents is available on the NSW Ministry of Health website: <http://www.health.nsw.gov.au/mhdao/Pages/legislation.aspx>

### **Mental Health Regulation 2013**

- Amendments to the Mental Health Regulation are currently going through approval processes. The Ministry will notify LHDs / SNs once any such amendments have been approved and provide an explanation of the changes.

### **Training (on the changes to the Act)**

- Training will be provided throughout NSW to mental health and emergency department staff by the NSW Institute of Psychiatry.
- The *Mental Health Act 2007* Guidebook which provides practical information to mental health practitioners, as well as those who provide support and advice to persons and carers is being updated. Once completed the Guidebook will be available through the NSW Ministry of Health website: <http://www.health.nsw.gov.au/mhdao/Pages/legislation.aspx>

## **ATTACHMENTS**

1. Attachment A: Index of Forms.

## Attachment A

### AMENDMENTS TO THE *MENTAL HEALTH ACT 2007- Index of Forms*

Status	Description
<b>AMENDED</b>	Schedule 1 – Medical certificate as to examination or observation of person
<b>AMENDED</b>	Schedule 3 – Statement of rights for persons detained in mental health facility
<b>NEW</b>	Schedule 3A – Statement of rights for voluntary patients
<b>AMENDED</b>	Form 1 – Medical report as to mental state of detained person
<b>AMENDED</b>	Form 2 – Mental health inquiry
<b>AMENDED</b>	Form 3 – Appeal by patient against refusal to discharge patient
<b>AMENDED</b>	Form 4 – Appeal by person other than patient against refusal to discharge patient
<b>AMENDED</b>	Form 5 – Information and consent – Electro Convulsive Therapy (ECT)
	Form 6 - ECT Register
	Form 7 – Summons: Mental Health Review Tribunal
	Form 8 – Oath of Assessor
<b>AMENDED</b>	Form 9 – Particulars of involuntary referrals
<b>NEW</b>	Identification of principal care provider
<b>NEW</b>	Notice to designated carer/principal care provider of application for consent to Electro Convulsive Therapy (ECT) - patient under 16 years
<b>NEW</b>	Notice to principal care provider of an involuntary patient of application to Mental Health Review Tribunal for consent for proposed surgical operation
<b>NEW</b>	Detention of voluntary patient for up to two (2) hours
<b>NEW</b>	Notice to Mental Health Review Tribunal of decision to revoke or not apply for a further Community Treatment Order
<b>NEW</b>	Notice to designated carer or principal care provider of changes to or decision to revoke Community Treatment Order (CTO)
<b>NEW</b>	Notice to medical superintendent of a health facility of request to see an Official Visitor
<b>NEW</b>	Application for discharge from mental health facility
<b>AMENDED</b>	Application by guardian for voluntary admission of person to hospital
<b>AMENDED</b>	Application for consent to surgical operation
<b>AMENDED</b>	Application from designated carer or principal care provider for discharge of patient
<b>AMENDED</b>	Application to medical superintendent for review of decision of authorised medical officer
	Breach Order – Section 58(4)
<b>AMENDED</b>	Decision of designated carer in respect of proposed surgical operation
<b>AMENDED</b>	Nomination of designated carer(s)
<b>AMENDED</b>	Notice to detained person of mental health inquiry

<b>Status</b>	<b>Description</b>
<b>AMENDED</b>	Notice to guardian of discharge of voluntary patient
<b>AMENDED</b>	Notice to patient of breach of Community Treatment Order (CTO)
<b>AMENDED</b>	Notice to designated carer or principal care provider of an involuntary patient of application to Mental Health Review Tribunal for consent to Electro Convulsive Therapy (ECT)
<b>AMENDED</b>	Notification to designated carer or principal care provider of other than involuntary patient of application to determine validity of Electro Convulsive Therapy (ECT) consent
<b>AMENDED</b>	Notification to designated carer or principal care provider of proposed special medical treatment
<b>AMENDED</b>	Notification to designated carer of proposed surgical operation
<b>AMENDED</b>	Personal application for voluntary admission to a mental health facility
<b>AMENDED</b>	Request by Ambulance Officer for assessment of mentally ill or mentally disturbed person
<b>AMENDED</b>	Request by a member of NSW police force for assessment of a detained person
<b>AMENDED</b>	Transfer of involuntary patient between mental health facilities
<b>NEW</b>	Statement – Your rights after the mental health inquiry