

Understanding The Mental Health Act

INFORMATION SHEET 14
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Mental Health Line

24 hours a day

7 days a week

1800 011 511

This information sheet is one of a series of information sheets.

The NSW Mental Health Act 2007 is an Act of Parliament that governs the care, treatment and control of people in NSW who experience a mental illness or mental disorder.

The Act states that people are to receive the most effective care and treatment possible in the least restrictive environment, and that any restriction of liberty and interference with the rights, dignity and self-respect of the person is to be kept to the minimum necessary. This might mean that the person could be involuntarily treated in the community, and not necessarily in hospital, depending on the level or risk or severity of illness.

Who is a mentally ill person under the Act?

A "mentally ill person" is someone who is suffering from a mental illness and owing to that illness there are reasonable grounds for believing that care, treatment or control of the person is necessary:

- for the person's own protection from serious harm, or
- for the protection of others from serious harm.

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 deciding that the temporary care (up to 3 working days), treatment or control of the person is necessary to protect them or others from serious harm.

What does the Act provide for?

The Act makes provisions for the care of people who:

- are admitted to hospital voluntarily (informal patient)
- are admitted to, or detained in hospital against their wishes (involuntary patient)
- are required to receive treatment in the community
- have committed a serious offence and are mentally ill (forensic patient).

Who can arrange for involuntary admission of a person to hospital?

- Medical practitioners
- Police
- Ambulance Officers
- Accredited Person (who is a Gazetted Mental Health Professional)
- A Court / Magistrate

What does the Act say about families and carers?

The Act now contains provisions for the appointment of nominated primary carers. A 'Primary Carer' can be a guardian, parent, spouse/partner, relative or close friend; meaning a friend or relative who maintains both a close personal relationship with the person through frequent personal contact and a personal interest in their welfare, and who does not provide support to the person wholly or substantially on a commercial basis (e.g. care worker, lawyer, etc). The Act specifies certain obligations on the 'authorised medical officer' towards the 'nominated primary carer' regarding information sharing, notifications, consultation and involvement in care and discharge planning.



Health
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What is the Mental Health Review Tribunal, and what is its role?

The NSW Mental Health Review Tribunal is a specialist legal body established under the Mental Health Act 2007. It has a wide range of powers that enable it to make and review Orders about the treatment and care of people with a mental illness in NSW. It is made up of several panels, each consisting of a lawyer, a psychiatrist and a suitably qualified or experienced community person.

Throughout NSW these Tribunal panels conduct hearings at hospitals and community health centres, as well as via telephone or video conferencing. Their decisions cover a range of issues including:

- whether to discharge or detain a person in hospital - they may also 'adjourn' a hearing for up to 14 days if a clear decision cannot be made at the time
- approving Community Treatment Orders
- reviewing and approving extensions of inpatient and Community Treatment Orders
- approving Orders for the management of a person's finances under the 'NSW Trustee and Guardian'
- reviewing the care of long-term inpatients
- reviewing applications for and authorising Electro-Convulsive Therapy (ECT).

What is a Community Treatment Order (CTO)?

A CTO is a legal Order made by the Mental Health Review Tribunal. It provides a community based alternative to involuntary hospitalisation, for people deemed able to be effectively treated out of hospital, and requires a person to accept medication, therapy, rehabilitation or other services for up to 12 months. A CTO can now be issued either in hospital or while living in the community.

CTO's may be renewed if the treating team considers that it is necessary and the Tribunal approves the application. An application for a renewal of a CTO must be presented to the Tribunal before the existing CTO expires. The Tribunal will inform the person in writing of the Hearing and encourage them to attend, but can renew a CTO in the person's absence.

What happens if a person on a CTO refuses treatment?

If the treating team decides that there is a significant risk of deterioration in the mental condition of a person subject to a CTO if they do not receive treatment, then mental health staff can commence a 'breach' process. This involves verbal and written warnings to the person that they must comply with the CTO. If this is unsuccessful, the assistance of the police may be obtained to transport the person to hospital and subsequently to be assessed, treated, admitted or released.

What is the Mental Health Advocacy Service?

It is a service that coordinates free legal representation for mental health patients in NSW. It provides a free telephone advice service on mental health law and can provide free legal representation to patients at hearings etc, who are involuntarily detained in hospital. Patients can organise a private lawyer if they wish.

What is the Guardianship Tribunal?

The Guardianship Tribunal is a legal tribunal established under the NSW Guardianship Act 1987. It has a key role in the protection and empowerment of people living with a decision-making disability. The Guardianship Tribunal determines applications for, and appoints guardians and financial managers for, persons 16 years and over who are incapable by reason of their disability (which may include mental illness as defined by the Mental Health Act), of making their own personal and financial decisions. It can also provide substitute consent to medical and dental treatment in situations where people are unable to consent for themselves.

What assistance is provided to help people with a mental illness and their families to exercise their rights?

The following agencies and individuals may be involved:

- Patient Liaison Officer
- Official Visitors
- Health Carer Complaints Commission
- The Mental Health Advocacy Service
- Carer Assist Carer Advocates
- The Mental Health Review Tribunal
- The NSW Trustee and Guardian
- The Guardianship Tribunal
- The Supreme Court of NSW