

Amendments to the NSW Mental Health Act (2007)

FACT SHEET: Carers and Families

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 carers and families to understand the changes to the Act. Further information on the Act can be found at [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 detained to enable appropriate care and treatment to be provided, subject to certain conditions.

Who is a mentally ill person under 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.

Who is a mentally disordered person under the Act?

A mentally disordered person is someone whose behaviour is so irrational 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.

Who is a mental health consumer?

A mental health consumer is a person who has a lived experience of a mental health illness or mental health 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 facilitate the involvement of consumers and carers in decisions about care and treatment.

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 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 the Act which directly affect Carers

The amendments to the Act strengthen the role of carers and the importance of involving them in the treatment and recovery of mental health consumers. Further information about relevant changes to the Act is provided below.

Primary carers and designated carers

The term 'primary carer' 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 the consumer in most cases or identified by treating clinicians according to a hierarchy in the Act. Consumers can now nominate up to two designated carers.

Principal care provider

A new type of carer has been added to the Act, the principal care provider. The principal care provider is the individual who is primarily responsible for providing support and/or care to a consumer (other than wholly or substantially on a commercial basis). A person in receipt of a Carer's Pension is not seen as providing care on a commercial basis and can therefore be considered as a principal care provider.

The principal care provider may also be a designated carer of the person and has similar rights to information about a consumer as a designated carer.

An Authorised Medical Officer or the Director of Community Treatment may determine who is the principal care provider of a consumer. A person cannot be the principal care provider if they have been excluded by the consumer from being given notice or information.

It should be noted however, that there are limitations on consumers being able to exclude carers from receiving information under the Act. A designated carer or principal care provider can still be nominated and receive information if the consumer is deemed to lack capacity to exclude that carer, or if the exclusion may put the consumer or any other person at risk of harm.

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.

Notification to carers of certain events

Designated carers and the principal care provider are to be notified by the treating clinicians of events affecting the consumer, such as when the consumer is:

- detained in a mental health facility;
- absent from the facility without permission, or fails to return at the end of a period of leave;
- to be discharged;
- reclassified or admitted as a voluntary patient;
- considered for a community treatment order (CTO) and an application is being made to the Mental Health Review Tribunal (see box below);
- under a CTO which is being varied or revoked;
- considered for Electroconvulsive Therapy (ECT) and an application is being made to the Mental Health Review Tribunal;
- believed to require a surgical procedure or special medical treatment and consent is being sought from the the Tribunal or the Ministry of Health;
- to be transferred, or has been transferred, between mental health facilities.

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.

Designated carer(s) and the principal care provider can make a request to:

- have the consumer they are caring for admitted to a mental health facility;
- be provided with information about the types and dosages of medication being administered to the consumer;
- have an Official Visitor (see box below) visit;
- have the consumer they are caring for discharged from a mental health facility, and appeal to the Tribunal against a refusal to discharge the consumer.

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.

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 box below) or a medical practitioner may examine or observe a person via audio visual link for the purposes of writing a Schedule 1.

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 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.

Changes to the ongoing detention of a person at a mental health facility

Where a person has been detained in a declared mental health facility, the Act requires that at least one further examination occur to determine if the person requires ongoing detention.

The Act now allows an accredited person to personally observe and examine a person where an authorised medical officer or other medical practitioner is unavailable.

The Act now requires the assessing clinician to seek and consider the views, where possible, of carers, relatives, treating health professionals and relevant emergency services personnel, when making determinations about a person's need for ongoing involuntary treatment, or when considering whether they are ready for discharge. If the assessing clinician is not a psychiatrist, then the advice of a psychiatrist should be sought where ever possible in relation to a person's ongoing detention.

Changes for Young persons

Young persons under 16 years of age must now be provided with legal representation for all Mental Health Review Tribunal hearings unless the Tribunal determines it would be in the young person's best interests to proceed without representation.

Where Electroconvulsive Therapy (ECT) is proposed for a voluntary or involuntary patient who is under 16 years of age, an assessment by a psychiatrist with expertise in child and adolescent development is now required. The Tribunal is now required to hold a hearing in **all** such cases to determine if ECT can be provided to the young person.

Providing support to carers – relevant links

The NSW Family and Carer Mental Health Program provides educational sessions for the families of people living with a mental illness and is funded by the NSW Ministry of Health through the Mental Health and Drug & Alcohol Office. Full details of the Family and Carer Mental Health Program can be found at: www.health.nsw.gov.au/mentalhealth/Pages/family-mh.aspx

Further information on support for Carers can be found at:

- Carers NSW: www.carersnsw.org.au
- Mental Health Carers ARAFMI NSW Inc: www.arafmi.org

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

Other relevant links

- Information on the **Mental Health Review Tribunal** can be found at: www.mhrt.nsw.gov.au/the-tribunal
- The Mental Health Association of NSW offers a directory of Mental Health Services in NSW: www.wayahead.org.au
- 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 complete, the Guidebook will be available on the NSW Ministry of Health website: www.health.nsw.gov.au/mentalhealth/Pages/legislation.aspx
- Information on the Official Visitors Program can be found at: www.ovmh.nsw.gov.au