

Mental Health Act 2007

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Functional Sub group Clinical/ Patient Services - Mental Health
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Summary Commencement of operation of the Mental Health Act 2007, information about key changes from the Mental Health Act 2007.

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Applies to Area Health Services/Chief Executive Governed Statutory Health Corporation, Board Governed Statutory Health Corporations, Affiliated Health Organisations - Non Declared, Affiliated Health Organisations - Declared, Community Health Centres, Divisions of General Practice, NSW Ambulance Service, NSW Dept of Health, Private Hospitals and Day Procedure Centres, Public Hospitals

Audience Administration, all clinical mental health staff, emergency departments

Distributed to Public Health System, Community Health Centres, Divisions of General Practice, Health Associations Unions, Health Professional Associations and Related Organisations, NSW Ambulance Service, NSW Department of Health, Public Hospitals, Private Hospitals and Day Procedure Centres, Tertiary Education Institutes

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MENTAL HEALTH ACT 2007

The Mental Health Act 2007 (the Act) was passed by Parliament earlier in the year and is to come into effect on 16 November 2007. The Mental Health Act 1990 (the 1990 Act) will cease to have effect.

The Act maintains many of the principles of the 1990 Act. For example many key elements remain unchanged, including the definitions of mental illness and mentally ill person, the definition of mentally disordered person, the concept of treatment in the least restrictive environment in which treatment can be provided effectively, the timing of Magistrate and Mental Health Review Tribunal reviews of involuntary detention.

Notable new features of the 2007 Act include:

- Additional objectives to be applied in the provision of care and treatment (s68), including:
 - ◆ Care and treatment should be designed to assist people with a mental illness or mental disorder, wherever possible, to live, work and participate in the community;
 - ◆ Every effort that is reasonably practicable should be made to involve patients in the development of treatment plans and plans for ongoing care;
 - ◆ The role of carers for people with mental illness or disorder and their rights to be kept informed should be given effect.
- Ambulance Officers who have appropriate authorisation are added to the range of persons (eg Police, medical practitioners, accredited persons) who may initiate transport to a mental health facility for assessment (s20);
- Community Treatment Orders (CTOs) will be able to be made for people living in the community without need for inpatient admission;
- The maximum possible duration of CTOs is extended to 12 months (ss51, 56);
- A definition of Primary Carer is provided with provision for patients to make nominations and to also nominate persons who are not to be provided with information about them (ss71, 72);
- Clear powers are provided to detain for transport, sedate and search (s81);
- Psychosurgery becomes prohibited (s83);
- Mental Health Review Tribunal approvals of electro convulsive therapy (ECT) are not to exceed 12 treatments, unless there are special circumstances (including the success of any previous ECT) to justify a higher number of treatments (s96);
- Gazetted "hospitals" and "health care agencies" under the 1990 Act will become "declared mental health facilities" (s109).
- Provisions in respect of forensic patients remain unchanged, other than being largely moved from the Mental Health Act to the Mental Health (Criminal Procedure) Act 1990.

Ambulance Officers

An authorised Ambulance Officer who is providing ambulance services to a person may take them to a mental health facility if the officer believes they may be mentally ill or mentally disturbed.

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Ambulance officers must be specifically authorised to undertake this role. That is occurring progressively as they undergo training. It will be some time before all ambulance officers are authorised.

Primary Carers

The Act provides, through a prescribed hierarchy set out in section 71, for each patient of a mental health facility (both inpatient and community) to have a primary carer. At the top of the hierarchy is a guardian, if one is appointed. Next is a parent if the patient is under 18 years of age. If neither a guardian or a parent is appropriate, the patient is entitled to make a nomination. If no nomination is made, the primary carer is a spouse (if the relationship is close and continuing) or then any person who is primarily responsible for providing support or care to the patient (other than on a commercial basis).

Any nomination (or variation or revocation) of a primary carer made by a patient must be given effect to unless it is reasonably believed:

- that to do so may put the patient or nominated person or any other person at risk of harm; or
- that the patient who made the nomination (or variation or revocation) was, at the time incapable of making it.

The Regulation provides that nominations will remain in force for a period of twelve months.

Persons nominated as Primary Carers are to be provided a range of information. Particular note should be taken of the requirement in section 75 to notify the primary carer within 24 hours of a person being involuntarily detained in a mental health facility. Section 78 deals with some other situations where information is to be provided to primary carers.

Patients are also entitled to nominate persons to be excluded from receiving notices and information (s72(2)). A person under 18 may not exclude a parent (s72(3)).

Notices

There are a number of provisions of the Act that require persons (eg patients, primary carers) to be provided a notification or a document. Section 192 deals with how delivery may be effected, eg by personal delivery, by post or by fax.

Mental health facilities should endeavour to obtain other contact information, eg telephone and mobile numbers, particularly for primary carers, so that notifications can be supplemented as necessary to ensure timely provision of information. Notification to primary carers of a person's admission (s75), as mentioned under the heading above, is an example of a situation where notification by post alone would be insufficient.

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Community treatment orders

Continue to be available to be made at Magistrates' inquiries in inpatient units. They may now also be made for people in the community. The criteria for making of such orders are similar to those in the 1990 Act. It is a requirement that persons to be the subject of an application for a CTO be provided with a notice to that effect and a copy of the proposed treatment plan.

Applications for CTOs for people living in the community are to be made to the Mental Health Review Tribunal. For people not detained in a mental health facility, the application must not be heard earlier than 14 days after the person is given notice of the application.

The persons who may apply for a community treatment order are:

- the authorised medical officer of a mental health facility where the person is a patient;
- a medical practitioner who is familiar with the clinical history of the person;
- the director of community treatment (director of a health care agency in the 1990 Act) who is familiar with the clinical history of the person; and
- the primary carer of the person.

Authorised medical officers

In the 1990 Act, the term "medical superintendent" had different meanings depending upon the section of the Act. For some functions (mainly those relating to actions and decisions about involuntary patients), the "medical superintendent" included a "medical officer, nominated by the medical superintendent, attached to the hospital".

The 2007 Act clarifies the situation by relying primarily on the term "authorised medical officer" in relation to issues and decisions about patient care. The term "medical superintendent" is used in relation to management and administrative decisions.

The medical superintendent is required to nominate the authorised medical officers who will perform functions under the Act for the mental health facility. Each mental health facility should maintain a current record of the persons nominated.

Mental health facility infrastructure

On the 16 November 2007, gazetted "hospitals" will automatically become "declared mental health facilities". Authorised (licensed, private) Hospitals will become "private mental health facilities". Appointments of medical superintendents and deputy medical superintendents of these facilities in place on that day will continue to be valid.

Services gazetted as health care agencies under the 1990 Act have also been gazetted as "mental health facilities".

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Continuance of involuntary patient orders

Temporary Patients orders and Continued Treatment Patients orders will continue to be valid for the periods for which they were made. They will be known under the one name of Involuntary Patient orders.

Persons admitted involuntarily and awaiting an outcome from a Magistrate's inquiry will become known as "assessable persons".

Community Treatment Orders will continue to be valid for the periods for which they were originally made. Any existing Community Counselling Orders will lapse on 16 November 2007.

Provision of forms of documentation

A number of documents are used in the day-to-day operation of the Act. A listing of the documents is in attachment A. Hard copies of some of these documents are being provided directly to inpatient mental health facilities. The documents will also be available for downloading from the Department of Health website.

The document "Schedule 1 - Medical Certificate as to examination of observation of person" is a stock item (NH600900 PH202) obtainable from Salmat, the Government forms stockist (ph 02 9743 8777, fax 02 9743 8746).

Electro Convulsive Therapy Registers can be obtained from the Mental Health and Drug & Alcohol Office on 02 9391 9307.

The Mental Health Act 2007 and the Mental Health Regulation 2007 can also be purchased from Salmat (ph: 1300 656 986, fax: 02 9324 1901) or can be viewed at <http://www.legislation.nsw.gov.au/>.

Otherwise, there is no centralised stock of forms maintained and mental health services will have to make their own arrangements for supply.

Training

Is being organised through the NSW Institute of Psychiatry. Area health services will have received requests to nominate key staff for phase 1 training prior to the Act coming into operation. Further training will be carried out over the next twelve months.

Professor Debora Picone AM
Director-General

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