

Understanding the Mental Health Act 2007 (NSW)

The *NSW Mental Health Act 2007* and *Mental Health Amendment Act 2014* (NSW) are Acts of Parliament that govern the care and treatment of people in NSW who experience a mental illness or a mental disorder.

The Act states that people with a mental illness or a mental disorder are to receive the most helpful care and treatment possible, in the least confined surroundings, and that recovery is to be promoted.

Who is a mentally ill person under the Act?

A 'mentally ill person' is someone who is suffering from a mental illness and due to the illness, there are reasonable grounds for believing that care and treatment 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 considered to be so irrational that there are reasonable grounds for believing they require care and treatment to protect them and/or others from serious physical harm.

Who does the Act provide for?

The Act makes provisions for the care of people who:

- are admitted to hospital voluntarily
- are admitted to and kept in hospital against their wishes (involuntary patient)
- are required to receive treatment in the community
- have committed an offence and are mentally ill (forensic patient).

Who is a voluntary patient?

A voluntary patient is a consumer who:

- has chosen to be admitted to a mental health facility
- is under guardianship and has been admitted at the request of, or with the consent of their guardian
- has been admitted as an involuntary patient and is reclassified by an agreement between the consumer and the Treating Team.

Can a voluntary consumer be reclassified as an involuntary consumer?

Yes. If the clinical team is of the opinion that the voluntary consumer is a mentally ill person or a mentally disordered person, then the consumer can be detained.

Who can arrange for a person to be taken involuntarily to hospital for assessment?

This is called scheduling under the Act. Those who can write a schedule include:

- A medical practitioner
- Police and Ambulance officers
- An Accredited Person (specifically authorised mental health staff)
- A Court/Magistrate

What is a declared mental health facility?

Where a person needs to be taken from the community to a facility for an involuntary assessment, the *Mental Health Act 2007* requires that they be taken to a declared mental health facility. If they are found to be mentally ill or mentally disordered as a result of this assessment, they can be further detained and given involuntary mental health treatment in a declared mental health facility.

The detention or admission of a person in a non-declared mental health facility for the purposes of a mental health assessment or involuntary mental health treatment is illegal.



All of the mental health inpatient units in Southern NSW Local Health District are declared mental health facilities. In addition, five Emergency Departments in Southern NSW Local Health District are declared facilities where mentally ill or mentally disordered persons may be assessed. The Emergency Departments are:

- Bega Hospital Emergency Department
- Batemans Bay Hospital Emergency Department
- Cooma Hospital Emergency Department
- Goulburn Hospital Emergency Department
- Queanbeyan Hospital Emergency Department

Involuntary admission to a Mental Health Inpatient Unit

If your family member/friend is scheduled, they will be taken to a Mental Health Inpatient Unit. On arrival they will be assessed by a psychiatrist. If the doctor believes that involuntary treatment is necessary, they will be admitted to the Unit. A few days following admission, a Mental Health Review Tribunal Hearing is held to review the doctor's decision to the involuntarily care and treatment of the person.

What is the Mental Health Review Tribunal (MHRT)?

The MHRT is a specialist body constituted under the MH Act. 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.

What happens at a Tribunal Hearing?

If a person requires treatment as an inpatient for longer than a few days and they do not consent to treatment, they must be seen as soon as practicable by the Tribunal. The hearing takes between 10 and 30 minutes and may be held via a video link. Your family member/friend will be present, along with a lawyer representing their interests. A treating doctor will be asked to inform the Tribunal members the reasons they feel the involuntary treatment is necessary. The consumer may also ask the doctor questions or address the Tribunal.

A Designated Carer and/or Principal Carer has a right to be present at that hearing. If the consumer objects, carers may still request to attend and the Tribunal may decide that this is in the best interests of the consumer. If this situation arises you should discuss it with the Treating Team.

The Tribunal, from the evidence provided, considers whether:

- The person is "mentally ill" as defined by the Mental Health Act.
- The correct procedures for the admission of the person were followed.
- The person requires further detention or not.

The Tribunal can:

- place the person on a Temporary Order to stay in hospital for up to 3 months;
- adjourn the inquiry for up to 14 days;
- place the person on a Community Treatment Order (for involuntary community follow up);
- discharge the person.

How do we get legal representation or advice?

The Mental Health Advocacy Service provides a legal service for any person being treated without their consent. This is a free service and can be contacted for advice at any time on **02 9745 4277**. You do not have to arrange this or request this, it is arranged automatically. Anyone is welcome to arrange a private solicitor at their own expense.

What rights does my family member/friend have?

The doctor or nurse admitting your family member or friend must give them a copy of the Statement of Rights (Schedule 3 – Statement of Rights for Persons Detained in Mental Health Facility or Schedule 3A - Statement of Rights for Voluntary Patients) spelling out their legal rights and entitlements. You are welcome to ask for additional copies of this form from the Treating Team.



What happens when my family member/friend is discharged from the hospital?

All reasonably practicable steps must be taken to ensure you and your family member/friend have been consulted in relation to planning discharge and subsequent treatment, and provided with information about follow-up care. Follow-up care usually involves a combination of care provided by the local Community Mental Health Alcohol and Other Drugs (MHAOD) Team and relevant GP. You and your family member will be given a copy of the Mental Health Inpatient Unit Consumer and Carer Transfer of Care Plan and a copy of the Wellness Plan. A Transfer/Discharge Summary will be faxed to your family member/friend's GP within 12 hours of discharge.

What is a Community Treatment Order (CTO)?

A CTO is a legal order made by the MHRT. It sets out the terms under which a consumer must accept for example, medication, counselling. It is implemented by a Community Mental Health facility. If the consumer does not comply with the CTO, they can be breached and taken to a declared mental health facility and given appropriate treatment.

The NSW Trustee and Guardianship Act 2009

Under this Act, a number of bodies can make orders for financial management, including Magistrates, the Supreme Court, and the Guardianship and Mental Health Review Tribunals.

What is the Guardianship Tribunal?

The Tribunal can appoint guardians and financial managers for persons 16 years and over, who are incapable by reason of their disability (which includes mental illness) of making their own personal and financial decisions.

Official Visitors

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. Official Visitors also routinely visit Community Mental Health Centres and Declared Emergency Departments to review MH service delivery at these settings. They also receive and refer complaints made to them by those receiving care and treatment in these facilities or their carers.

Official Visitors are available to assist individuals on community treatment orders. Consumers, carers and staff are welcomed to meet with the Official Visitors at any of these visits. You can also phone them or write a letter and leave it in the Official Visitors box at the Mental Health Unit.

Other services and individuals that could help people with a mental illness and their families to exercise their rights are:

- Consumer Advocates
- Family & Carer Support Workers
- Carer Advocates (One Door Carer Services)
- Supported Transition of Carer Peer-Workers (PeerSTOC)

