

Mental Health Act Education and Training

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Mental Health Act Education and Training Project 2015

Version: 10/10/2015



Health



Consumers

Use of the term “consumer” in this presentation

- “**Consumer**” is used when we refer to broad community of people on MH treatment and their recovery, rights etc.
- “**Person**” is used when we quote the Act or refer to individual(s) prior to assessing or scheduling
- “**Patient**” is used when we quote the Act or refer to individual(s) treated in the MH facilities or the MH system

Introduction

- The Mental Health Act 2007 (the 'Act') establishes the legislative framework for the care and treatment of people with a mental illness in NSW
- The Act states definitions, objectives and requirements (provisions) for people treated in mental health facilities as well as those living in the community
- The Act was recently amended by the *Mental Health (Statutory Amendment) Act 2014*
- Changes to the Act came into effect on 31 August 2015

Most of the Act remains unchanged

- Key definitions (i.e. mental illness, mentally ill and mentally disordered) remain unchanged
- Protection of the person or others from serious harm remains the main consideration for involuntary treatment and detention
- Criteria for making a Community Treatment Order (CTO) are unchanged

Overview of changes

Consumers

- Increased focus on 'Recovery' in the objects and principles of the Act
- Patient consent to treatment and recovery plans, where possible

Carers

- Designated carer(s) replace primary carer
- New concept: principal care provider

Assessments

- Views of carers to be considered when determining under Form 1 the need for involuntary treatment or when needing to discharge a patient.
- Changes to whom can undertake Form 1 assessment
- Scheduling and Form 1 assessments can be conducted via video conference
- Ability to detain a voluntary patient for up to 2 hours to enable assessment to be conducted

Overview of changes (cont.)

Voluntary/involuntary patients

- Voluntary Patient Statement of Rights
- Involuntary Patient Statement of Rights amended to include the right to request discharge anytime and to appeal if discharge is not granted
- Rights to see Official Visitors now included in the statement

The Mental Health Review Tribunal

- Some revised and additional requirements and options for the Tribunal at certain hearings

Community treatment orders

- Revocation/non renewal of CTO - additional duties of Director of Community Treatment to advise carer(s) and the Tribunal

Overview of changes (cont.)

Young people

- Appropriate treatment for their age group and special clause for Electro-convulsive Therapy (ECT) and legal representation at the Tribunal's hearings

Consent for surgery

- Voluntary/involuntary patients

Changes to the Objects of the Act s3

- The term 'control' removed from the Objects of the Act
- **emphasis on the recovery** of persons who are mentally ill or mentally disordered
- Treat people **for their own protection and the protection of others from harm**



Actual changes in the Act

2007

(a) care, treatment and control of persons who are mentally ill or mentally disordered

(b) to facilitate the care, treatment and control via community care facilities

(c) protection of civil rights and access to appropriate care

(d) While protecting the civil rights, to give opportunity to access appropriate care

(e) to facilitate the involvement of those persons, and persons caring for them, in decisions involving appropriate care, treatment and control

2015

‘Control’ has been removed from (a), (b) and (e)

(a) To provide for the care and treatment of, and to promote the recovery of persons who are mentally ill or mentally disordered.

(d) “ ... and where necessary to provide for treatment for their own protection or the protection of others”



No changes to the definitions of mental illness and mental disorder, however...

Communique - November 2014 - NSW Health Chief Psychiatrist

Waterlow Inquiry

The Coroner recommended that the term ‘for the person's own protection from serious harm’ should be understood to include the harm caused by the mental illness itself, and to include the protection of others from serious emotional harm.

Who is a mentally ill person under the Mental Health 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. Under the Act a person who is mentally ill may be involuntarily detained.

Who is a mentally disordered person under the Mental Health 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. Under the Act a person who is mentally disordered may be involuntarily detained.



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No changes were made to the Act in relation to section 14 as it was considered that the concept of 'serious harm' in the Act already covers the Coroner's recommendations.



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What is serious harm?

While serious harm is not defined in the Act it can be understood to potentially include:

- physical harm, including the risk of misadventure
- emotional/psychological harm
- financial harm
- self-harm and suicide
- violence and aggression (incl. the person being at risk of sexual assault or abuse as well as assaulting others)
- stalking or predatory intent
- harm to reputation or relationships
- neglect of self
- neglect of others (including children).

- QUESTIONS?
- IMPACT ON YOUR PRACTICE



Health





Changes to the Act – consumers s68

A greater focus on recovery: consumers to be supported in their recovery goals. Clinicians should take into account:

- the consumer's views and wishes about treatment, consent to be treated and consent to their treatment plan
- the support needs of consumers who lack capacity to understand their treatment plan s68(h1)
- the cultural and spiritual beliefs and practices of Aboriginal and Torres Strait Islanders in planning for their care and treatment
- the particular needs of some consumers with regard to disability or sexuality
- the particular developmental needs of consumers under the age of 18 years.

Principles for care and treatment of consumers s68

2007

- (e) people with a mental illness or mental disorder should be provided with appropriate information about treatment, alternatives and the effects of treatment . . .
- (g) the age-related, gender-related, religious, cultural, language and other special needs of people with mental illness or mental disorder should be recognised

2015

- (e) and be supported to pursue their own recovery
- (g) any special needs of people with mental illness or mental disorder should be recognised, including needs related to age, gender, religion, culture, language, disability or sexuality
- (g1) people under the age of 18 with mental illness or mental disorder should receive developmentally appropriate services
- (g2) the cultural and spiritual beliefs of people with mental illness or mental disorder who are Aboriginal or Torres Strait Islanders should be recognised.

Principles - care and treatment of consumers

2007 s68

(h) Every effort that is reasonably practicable should be made to involve persons with mental illness or mental disorder in the development of their treatment plans and **plans for ongoing care**

2015 s68

“**Plans for ongoing care**” has been removed and replaced with

(h) . . . recovery plans and to consider their views and **expressed wishes** in their development

(h1) every effort that is reasonably practicable should be made to obtain the **consent** of people with mental illness or mental disorder when developing treatment and recovery plans for their care, to monitor their capacity to consent and to support people who lack capacity to understand treatment plans and recovery goals.

Consumers - other changes

- *Every patient (voluntary or involuntary) must now be given a statement of their rights on admission*
- *Schedule 3A “Statement of Rights for Voluntary Patients”*
- Voluntary patients in a mental health facility must be reviewed by the Mental Health Review Tribunal at least once every 12 months of continuous residence; and the Tribunal must consider whether the voluntary patient is likely to benefit from further care or treatment

Consumers - other changes (cont.)

- The Involuntary Patient Statement of Rights has been amended so that involuntary patients have the right to see an official visitor, request discharge at any time, and appeal to the Mental Health Review Tribunal against any refusal to be discharged.
- A person scheduled under the Mental Health Act and detained in a health facility other than a mental health facility for medical treatment has the right to ask to see an official visitor s134A; and their carer also has this right.

The medical superintendent of a mental health facility must action their request not later than 2 days after being notified s134A

- QUESTIONS?
- IMPACT ON YOUR PRACTICE



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Carers

A carer is generally someone with whom the consumer has a close personal relationship and who has interest in their welfare.

A carer may be the guardian, parent (if consumer is under 14 years), spouse (if the relationship is close and continuing), close friend or relative, or any individual primarily responsible for providing support and care to the consumer.

Main change to Carers' provisions: two categories of carer: designated carer (formerly the primary carer) and the principal care provider.



Changes to Carers' provisions

- Under Principles of Care and Treatment s68, an additional requirement that “carers*be kept informed, be involved, and have information provided by them considered*” (s68j)
- ***‘Designated carer’*** replaces primary carer s71
- Consumers can nominate up to 2 designated carers s72(1)

Ideally consumers should be encouraged to nominate their designated carers when they first enter a mental health service.

The Principal Care Provider

- *“The individual who is primarily responsible for providing support or care to the person (other than wholly or substantially on a commercial basis)” s72A(1)*
- The principal care provider may be one of the two designated carers s72A(5)
- Where not nominated by the consumer, a principal care provider may be nominated in addition to the 2 designated carers

The Principal Care Provider (cont.)

New section 72A

An authorised medical officer or a director of community treatment:

- “may for the purpose of complying with a provision of the Act or regulations determine who is the principal care provider”
- “must not determine a person is the principal care provider if that person is excluded by the consumer from being given notice or information” under s72(2)
- is not required to provide information to the principal care provider if they reasonably believe that “to do so may put the person or the principal care provider at risk of serious harm”

The authorised medical officer or director of community treatment has overall authority in deciding whether a consumer’s nomination or revocation is to be acted upon.

Changes to Carers' provisions (cont.)

Carers should be consulted about discharge planning

New section s72B

An authorised medical officer or accredited person who examines an involuntary patient, or a detained person for the purpose of determining whether the person is mentally ill or disordered, or whether to discharge the person, should consider information provided by:

- The designated carers, principal care provider, relatives or friends of the person
- Treating health professionals
- Emergency services
- Any person who brought the detained person to the health facility

Example

- Mary is 25 years old and lives with her older sister Brigit. Mary does not want Brigit to know anything about her treatment, and puts this in writing to her doctor. The two sisters are estranged and no longer speak to each other.
- When asked to nominate up to two designated carers she nominates a close male friend, Johny, as a designated carer.

Who are her designated carer(s) and her principal care provider?

- After a few weeks, the relationship between the two sisters improves and Mary is speaking with Brigit again. She asks that Johny and his partner Helen be involved in her recovery plan.

Who are her designated carers (s) and her principal care provider at this stage?

Is there anything Mary should do?

Summary - carers' rights

- Now have the right to have the information they provide **considered** in the treatment and care of the consumer (Principles of care and treatment (s68(j) amended).
- Right to be given information about the consumer's care and treatment, (subject to restrictions) and to be notified of certain events (e.g. discharge planning).

What can carers request?

No actual changes except the following now applies to both designated carers and principal care providers:

- the consumer to be admitted into a mental health facility
- information about the types and dosages of medication being administered to the consumer
- the consumer to be discharged into their care
- the consumer be placed under community treatment order
- the visit of an official visitor

When should carers be notified?

These provisions have not changed but now refer to the designated carer and principal care provider, both of whom should be notified when the consumer

- is detained in a mental health facility (within 24 hours) s75
- has an upcoming mental health inquiry s76
- is absent from the facility without permission or fails to return at the end of leave
- is to be transferred to another mental health facility
- is to be discharged
- is reclassified as a voluntary patient
- is admitted as a voluntary patient

See s73 to s79



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When should designated carers be notified? s73 to s79 (cont.)

- is considered for a community treatment order (CTO) and an application has been made to the Tribunal
- has been on a CTO and that order is to be varied or revoked, or no further CTO is sought
- is considered for electro convulsive therapy and an application has been made to the Tribunal
- an application is made for consent for surgical operation or special medical treatment s78(g)

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Changes to assessment

- Assessing clinicians need to seek and consider the views of carers, family members, and other health professionals (including Emergency Service providers and community clinicians) when determining under Form 1 the need for involuntary treatment; or when considering discharge.
- A voluntary patient in a mental health facility may be detained for up to 2 hours to enable an assessment to be conducted to determine whether they are a mentally ill or mentally disordered person s10(3).



Changes to assessment (cont.)

- A medical practitioner or Accredited Person may examine or observe a person's condition using an audio visual link for the purpose of determining whether to issue a MH certificate, if it is not reasonably practical for a medical practitioner or accredited person to personally examine the person for that purpose s19A(1), and subject to other conditions.
- Authorised medical officers may undertake Form 1 assessments at a declared mental health facility where they are not an employee, if they are undertaking the assessment under s27A (i.e. by audio visual). However they should seek the approval of the medical superintendent before undertaking such assessments

Changes to assessment (cont.)

New s27A Examination by Medical Practitioners or Accredited Persons for the Purpose of Detention

- A medical practitioner conducting an audio visual assessment must be satisfied that they are able to assess the person with sufficient skill and care as to form a considered and informed opinion s19A(2)



Changes to assessment (cont.)

- Medical practitioners who are not psychiatrists and who are doing a video assessment, and all accredited persons, must seek advice of a psychiatrist (if reasonably practicable to do so). However, the psychiatrist is not required to examine the person.
- Accredited Persons may conduct a Form 1 assessment in person (but not via audio visual link) at a specific declared mental health facility, where they have been authorised by the medical superintendent.



Amendment to Form 1 to account for s27A

- Clinicians must understand their legal requirements in relation to s27A and appropriately document that those requirements have been complied with - as a failure to comply with s27A may call into question the legality of a person's detention.
- The new Form 1 assessment to be used when assessment is done by audio-visual link, or by an accredited person, is now available on the Ministry's web site, it is called 'Report as to mental state of a detained person – Section 27A'
- All other Mental Health Act Forms are on the Ministry website

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Changes - Voluntary Patients

- New Statement of Rights for voluntary patients – *Schedule 3 A*

Additional section s74A

- A voluntary patient must be given an oral and written statement of rights as soon as possible.
- If the practitioner is of the opinion the person is incapable of understanding their rights when first given, they must restate their rights again when the person becomes able to understand
- If the person is unable to communicate adequately in English but can in another language, an oral explanation is to be given in that language.

Changes - Voluntary patients (cont.)

- Must be reviewed at least once every 12 months of continued residence in a mental health facility by the Mental Health Review Tribunal, regardless of whether they were an involuntary patient at all during the 12 months period s9(1)
- When undertaking a voluntary patient' review the Tribunal is to consider whether the patient consents to continue as a voluntary patient **and whether the patient is likely to benefit from further care and treatment as a voluntary patient** s9(2).
- The Tribunal or Secretary of Health no longer can give consent to surgery (Guardianship Act applies)



Changes - Involuntary Patients

- Changes to the Statement of Rights for Involuntary Patients (*Schedule 3 - Statement of Rights for persons detained in a mental health facility*)
 - general right to see an official visitor
 - right to request discharge at any time
 - right to appeal to the Tribunal against refusal to discharge
- Some changes to the Tribunal's powers at reviews and appeals – more consistent options for patients

Changes - Involuntary Patients (cont.)

- A person under the age of 16 who has a matter before the Tribunal must be legally represented unless the Tribunal decides it is not in the best interest of the person
- If making a CTO for an involuntary patient the Tribunal can defer the discharge for up to 14 days

- QUESTIONS?
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Mental Health Review Tribunal

- **Reviews of involuntary patients :**

When making a community treatment order for an involuntary patient the Tribunal can defer the discharge of the consumer for up to 14 days.

- **Discharges**

The Tribunal can discharge a consumer into the care of their designated carer or principal care provider.

Mental Health Review Tribunal (cont.)

Appeals against discharge refusals s44

- The Tribunal can **now** make a CTO at an appeal hearing s51(6)
- The Tribunal can **now** defer the operation of an order to discharge for up to 14 days if it is in the person's best interests s44(6)

- QUESTIONS?
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Making Community Treatment Orders

S52 notice of applications (unchanged)

(3) If the affected person is not detained in a mental health facility , the application must be heard not earlier than 14 days after the notice is given

But revised s52(4)

“Subsection (3) does not apply

- a) to an application for a further CTO in respect to a person subject of a current CTO when the order was given
- b) if the tribunal decides it is in the best interests of the person the application be heard earlier than 14 days after the notice is given”

Even though the Tribunal can waive the 14 days notice requirement, patients must still be given ‘reasonable notice’ of an application for a Community Treatment Order.

Changes to CTO's

New added provisions to s66

- The Director of Community Treatment must notify the Tribunal in writing if he/she revokes or decides not to apply for a further order, or wishes to vary a CTO. s66(3)

Changes to CTO's

Added notification to s66

“The Director of Community Treatment of the declared mental health facility implementing a CTO must take all reasonably practicable steps to **notify any designated carer and the principal carer**, if the CTO is varied or revoked by the Tribunal or director; or if an application is made for a further order, or the director decides not to apply for a further order s66A (Notifications).

- QUESTIONS?
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The Act and Young people

- Under the Mental Health Act 2007 (the Act) a young person is someone under 18 years of age.
- The Act generally applies to young people who come within the definitions of a 'mentally ill person' or a 'mentally disordered person'.
- Young people in general have the same rights as adults under the Mental Health Act.



Changes to young people

- Under the principles of care and treatment, the Act states that those under the age of 18 years should be provided with ***developmentally appropriate*** services.
- A young person under 16 years of age must be provided with **legal representation** for all Mental Health Review Tribunal hearings unless he/she refuses, or the Tribunal determines it is in the young person's best interests to proceed without representation.

Young people and electroconvulsive therapy

- All applications for ECT for a young person under 16 years of age must be approved by the Tribunal.
- New provision - s94(2A) an authorised medical officer may apply to the Tribunal for an ECT administration inquiry about a person who is under the age of 16 (including an involuntary patient) if a certificate is given by at least 2 medical practitioners, at least one of whom is a **psychiatrist with expertise in the treatment of children or adolescents.**

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Surgery and voluntary patients

- The Mental Health review Tribunal will no longer be able to consent to a surgical operation for a voluntary patient, where the consumer is incapable of giving consent.

Neither the Secretary NSW Health nor the Tribunal has a role in consenting to surgery for voluntary patients.

- Consent must be sought from the Guardianship Division of the NSW Civil and Administrative Tribunal.

Surgery and involuntary patients

Sections s100(3) amended & s100(4) deleted

(3) On an application, the Secretary may consent to the performance of a surgical operation on an **involuntary** patient if of the opinion that:

- (a) the patient is incapable of giving consent to the operation, and
- (b) it is desirable, having regard to the interests of the patient, to perform the surgical operation on the patient.

Section (4) deleted

Acknowledgments

- Ms Pam Verrall, Member, MHRT
- Dr Nick O'Connor, North Shore Ryde Mental Health Service Clinical Director
- Ms Sarah Hanson, Executive Officer, NSW MH Commission
- Mr Rodney Brabin, Registrar, MHRT
- Mr Chris Leffers, Regulatory Team Manager MHDAAO
- NSW Health Legal branch

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