

MENTAL HEALTH ACT 2007

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**“My life isn’t
good or bad.
It’s an incredible
series of
emotional and
mental extremes,
with beautiful
thunderstorms and
stunning sunrises.”**

Jaeda Dewalt

The new Mental Health Act was introduced on 16 November 2007, and replaces the Mental Health Act 1990. Much of the Act remains the same but there have been significant changes to areas that will impact on consumers mental health services and carers of those with a mental illness.

What is the Mental Health Act?

The Mental Health Act is legislation that governs the way in which the care and treatment of people in NSW is provided to those people who experience a mental illness or mental disorder.

It aims to protect the rights of people with mental illness or a mental disorder while ensuring that they have access to appropriate care. This care is required to place as little restriction on the rights and liberty of the patient as the circumstances permit.

Who does the Act apply to or relate to?

The Act relates to the care of people (consumers) who are:

1. Admitted to a hospital voluntarily (voluntary patient)
2. Admitted to or detained in a hospital against their wishes (involuntary patient)
3. Required to receive treatment in the community (under CTO)

Why has a new Act been introduced?

Since the introduction of the 1990 Act, there have been significant changes in the NSW health system and in the way mental health services are provided and organized, as well as new regulatory developments, such as privacy laws. Because of this, the Government decided to review the Act to consider whether the amendments were necessary to make more effective and responsive to the needs of the community.

The review process commenced in 2004 and involved extensive consultation with a range of key stakeholders, including peak bodies representing consumers and carers, and health agencies.

The outcomes of the review indicated the need to make a number of changes to the Act, such as outlining the rights of consumers and carers and increasing access to information for carers while ensuring a level of control and privacy for consumers.

What are the main changes that consumers and carers need to know about?

The main changes to the Act that will affect consumers and carers are around the following areas:

Principles

The new Act maintains many of the principles of the earlier 1990 Act, but includes a number of new “principles” that directly relate to consumers and carers.

These principles are outlined below and provided health care agencies with overall guidance regarding treatment and care of consumers and involvement of carers.

- 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 consumers in the development of treatment plans and plans for ongoing care.
- The role of carers and their rights to be kept informed should be given effect.

- Medication is to be prescribed for therapeutic and diagnostic purposes only and not as punishment or for the convenience of others.
- Services are to be timely and of high quality, and provided in accordance with professionally accepted standards.
- The age, gender, religious, cultural and language needs of consumers and carers should be recognised.

Rights of Consumers and Carers

A new part has been created in the Act, entitled “Rights of Patients or Detained Persons and Primary Carers”.

It provides information about the obligation of health agencies towards mental health consumers and their carers. These rights include:

- That all persons taken to a mental health facility for involuntary assessment be given a Statement of Rights prescribed by the Act.
- That interpreters be used at medical examinations when the person is unable to communicate adequately in English.
- That it is an offence to ill treat patients.
- That a range of notifications and other information is to be provided to primary carers, including information about magistrate inquiries, medication, and discharge planning.

Sharing Information

One of the most significant changes to the Act is the recognition that carers and family members need greater access to information about the consumer. Based on the outcomes of the consultations conducted during the review of the 1900 Act, many believe it is important that carers, including family members, are given access to information that would assist them in providing care.

There is also concern that a patient is given some control regarding who is to be provided with information about them.

The new Act balances these views by: (September 2016)

- A person may nominate up to 2 persons to be the person’s Designated Carer for purposes of the Act. A designated carer for purposes of this Act is: the guardian of the patient; the parent of a patient who is a child, if the child is over the age of 14 years



and is not a person under guardianship, a person nominated by the patient as designated carer is in force under this part of the Act; the spouse of the patient if any, if the relationship of the patient and spouse is close and continuing, or any individual who is primarily responsible for providing support or care to the patient (other than wholly or substantially on a commercial basis); a close friend or relative of the patient.

- A person may nominate persons who are excluded from being given notice or information about the person under this Act and may revoke or vary such nomination.
- A person who is over the age of 14 and under the age of 18 may not exclude the person's parent by a nomination.
- A nomination, variation or revocation is to be made in writing and may be given to an authorized medical officer at a mental health facility or a director of community treatment.
- A nomination remains in force for the period prescribed by the regulations or until it is revoked in writing.
- Principal Care Provider-for the purposes of the Act, is the individual who is primarily responsible for providing support or care to the person (other than wholly or substantially on a commercial basis).
- An authorised medical officer at a mental health facility or a director of community treatment may, for the purposes of complying with a provision of the Act or the regulations, determine who is the principal care provider of a person.
- An authorised medical officer or the director of community treatment must not determine that a person is the principal care provider of another person if the person is excluded from being given notice or information about the other person under this Act.
- An authorized medical officer or a director of community treatment is not required to give effect to a requirement relating to a principal care provider of a person under this Act or the regulations if the officer or director reasonably believes that to do so may put the person or the principal care provider at risk of serious harm.
- A principal care provider of a person may also be a designated carer of the person.
- If the consumer does not have a guardian and they are over 18 years of age, but they do not nominate a carer, the mental health facility or community treatment director can choose one for them.

Transporting a Consumer to Hospital

Doctors, accredited mental health professionals and police officers can have a person taken to a mental health facility for assessment if they appear to be mentally ill, or mentally disturbed. Under the new Act, trained ambulance officers can also do this if a person they are providing ambulance services to appears to be mentally ill or mentally disturbed.

Treatment in the Community

Since 1990, many consumers have been able to have some of their involuntary treatment out of hospital, under Community Treatment Orders (CTO). A CTO requires consumers to follow a treatment plan that has been developed by their treating psychiatrist.

In the previous Act, mental health services could only apply for a CTO once a person had been admitted to hospital as an involuntary patient.

Now CTOs can be sought for people living in the community, which may enable them to avoid an unnecessary hospital admission. Applications for CTOs for community patients must be heard and approved by the Mental Health Review Tribunal. The other significant change to CTOs system revolves around the maximum duration for CTOs, is the maximum duration has been increased to 12 months.

Electro Convulsive Therapy

The use of Electro Convulsive Therapy (ECT) has had further restrictions added for involuntary patients. There is now a limit of 12 treatments per approval and more than 12 treatments may only be approved where the Mental Health Review Tribunal is satisfied there are special circumstances (including the success of any previous ECT) to justify a higher number of treatments. The Mental Health Review Tribunal must also determine ECT for a person under the age of 16 years.

Forensic Patients

Those parts of the Act that relate to forensic patients remain largely unchanged. However they have been moved from the Mental Health Act to the Mental Health Criminal Procedure Act 1990.

Being Assessed as Mentally Ill or Mentally Disordered

A person brought to hospital as mentally ill or mentally disordered may be assessed by an authorized medical officer for one of the reasons being; have a condition that seriously impairs either temporarily or permanently the mental function which is shown or exhibiting particular symptoms such as; delusions (false beliefs), hallucinations (hearing voices, or seeing things that no one else can, serious disorder of thought form (thoughts are not coherent), severe disturbance of mood, sustained or repeated irrational behaviour indicating the presence of delusions, hallucinations, serious disorder of thought or mood. This definition is based on the symptoms experienced, rather than diagnosis.

Risk of harming self or others; harm to reputation, relationships with others (including family members), financial position, property including potential financial exploitation, self care ability, potential for misadventure or likelihood that acute mental illness would continue or further relapse due to disengagement or refusal of treatment. A risk of self harm includes any risk that would cause physical injury, such as cutting or burning oneself , ingesting poisons or attempting to end their life.

A person must be seen by an authorized medical officer must be carried out within twelve hours of detainment in a mental health facility. If deemed to be mentally ill or mentally disordered, a second assessment will be carried out and further detainment required. If the second assessment does not agree with the first assessment, a third assessment will be carried out by a psychiatrist. If the third assessment concludes the person is not mentally ill or mentally disorders, they must be allowed to leave.

A person may be detained under the Mental Health Act as a mentally ill or mentally disorder person for three consecutive days, not including weekends and public holidays. They may be confined and given treatment against their wishes. The consumer must be examined every 24 hours by an authorized medical officer. The person may not detained on the grounds of being mentally ill or mentally disordered on more than three occasions in any one calendar month. Further detainment and administration or treatment may be enforced based on further assessment of a psychiatrist.

Where do I go for help?

The WayAhead Directory

is an online resource providing a comprehensive list of mental health related services in NSW.

www.WayAhead.org.au

Phone Lines

WayAhead Mental Health
Information Line

1300 794 991

Useful Websites

Institute of Psychiatry

www.nswiop.nsw.edu.au/mha/

NSW Health

www.health.nsw.gov.au/policy/cmh

For More Information

Talk to staff at a mental health facility.



Translating & Interpreting Service
(TIS) 131 450

Please call the Mental Health Information Line through the Telephone Interpreter Service (TIS). Free to Australian citizens or permanent residents.

Disclaimer

This information is for educational purposes. As neither brochures nor websites can diagnose people it is always important to obtain professional advice and/or help when needed.

This information may be reproduced with an acknowledgement to the Mental Health Association NSW.

The Association encourages feedback and welcomes comments about the information provided.

Last reviewed by Jamie Saltoon 2017

**“ I found people who
understood exactly what I
was going through ”**



