

MENTAL HEALTH ACT 2007

Information Sheet for Consumers and Carers

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

This information sheet explains what the Act is and why it has been changed as well as providing an outline of the changes and how they will make a difference to the treatment of consumers and carers.

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 or relate to?

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

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

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 organised and provided, as well as new regulatory developments, such as privacy laws. Because of this, the Government decided to review the Act to consider whether amendments were necessary to make it 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 provide 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 1990 Act, many believe it is important that carers, including family members, are given access to information that would assist them in providing care.

However, 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:

- Enabling consumers to nominate a particular person to be their 'primary carer' so this person can receive information and be involved in treatment planning;
- Establishing a process for identifying who will be the primary carer when the consumer is not able to or does not nominate a particular person; and
- Enabling consumers to exclude a person or persons who they do not wish to receive information about them or their treatment.

Nominating a 'primary carer'

A consumer can nominate their 'primary carer' – the person the mental health facility will contact, share information with and involve in the consumer's treatment and discharge planning – if the consumer does not have a guardian or is over 18 years of age. This nomination will stay in force for a 12 month period if there is no change requested by the consumer, and the consumer can change this nomination or reverse it at any time.

However, the mental health facility is under no obligation to act on this nomination if they have a reasonable belief that:

- to do so may put the consumer or nominated person or any other person at risk of harm; or
- the consumer was incapable of making the nomination.

Having a carer nominated by the mental health facility

If the consumer does not have a guardian and they are over 18 years of age, but they do not nominate a primary carer, the mental health facility can choose one for them.

However, they must use the following hierarchy or order of priority to decide who would be the most appropriate person to choose:

1. A spouse (if the relationship is close and continuing) or;
2. Any person who is primarily responsible for providing support or care to the patient (other than on a commercial basis – for example, a salaried employee of a mental health service or a non Government organisation); or
3. A close friend or relative of the patient (who maintains both a close personal relationship with the patient through frequent personal contact and a personal interest in the patient's welfare).

Nominating those to be excluded

Consumers are also entitled to nominate a person or persons to be excluded from being contacted or receiving information about their treatment. However, a person under the age of 18 cannot exclude a parent.

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 (CTOs). 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 CTO's system revolves around the maximum duration for CTOs is that their 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.

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.

Need more information ?

- Talk to staff at your mental health facility
- Visit the Institute of Psychiatry website www.nswiop.nsw.edu.au/mha/index.php
- Visit the NSW Health website www.health.nsw.gov.au/policy/cmh/

