

TASMANIA'S MENTAL HEALTH ACT

Mental Health, Alcohol and Drug Directorate
Department of Health and Human Services

Chief Psychiatrist Approved



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Overview

The *Mental Health Act 2013* regulates the involuntary assessment and treatment of people with mental illness.

The Act provides for Assessment Orders and Treatment Orders; regulates seclusion, restraint and patient leave; establishes the statutory offices of Chief Civil Psychiatrist and Chief Forensic Psychiatrist; and enables Official Visitors to be appointed.

The Act also establishes the Mental Health Tribunal and provides the Tribunal with a range of powers and functions.

The Act is consumer centred and recognises that competent adults have the right to make their own decisions about assessment and treatment. It requires decisions which infringe a person's rights to be independently oversighted; and provides consumers with specific rights.

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What is an Assessment Order?

An Assessment Order is a short term Order made by a medical practitioner which authorises a patient's assessment, without informed consent, by an approved medical practitioner (generally, a psychiatrist).

An Assessment Order may also authorise a patient's short term detention in an approved facility.

Assessment Orders often follow a period of Protective Custody; and may precede an application for a Treatment Order.

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What does an Assessment Order authorise?

- An Assessment Order is authority for a patient to be assessed, without informed consent, by an approved medical practitioner to confirm whether the patient meets the assessment criteria and to determine if the patient also meets the treatment criteria.
- An Assessment Order is also authority for any Mental Health Officer or police officer to take the patient under escort to ensure that the patient presents for assessment under the Order.
- An Assessment Order may also be authority for the person's admission to, and if necessary detention in, an approved hospital for and in connection with the assessment.
- An Assessment Order is not authority for the patient to be given any treatment – however Urgent Circumstances Treatment may apply.

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How are Assessment Orders made?

- An Assessment Order may be made by any medical practitioner.
- A medical practitioner may make an Assessment Order in respect of a person in, and only in, the following circumstances:
 - The medical practitioner must have examined the person in the 24 hour period immediately before the Assessment Order is made, and
 - The medical practitioner must be satisfied from the examination that the person needs to be assessed against the assessment criteria, and
 - The medical practitioner must be satisfied that a reasonable attempt to have the person assessed with informed consent has failed or that it would be futile or inappropriate to attempt this.
- An Assessment Order takes effect as soon as it is signed by the medical practitioner who makes it.

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Application

- A registered or enrolled nurse, medical practitioner, Mental Health Officer, police officer, ambulance officer or a guardian, parent or support person of a person for whom an Assessment Order is considered necessary may apply for an Assessment Order.
- The application should only be made if:
 - The applicant is satisfied, from a personal knowledge of the prospective patient, that the prospective patient has or might have a mental illness, and
 - The applicant is further satisfied that a reasonable attempt to have the prospective patient assessed, with informed consent, has failed or that it would be futile or inappropriate to make such an attempt.
- A medical practitioner may make an Assessment Order with, or without having received an application for the Order.

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Medical practitioner examination

- A medical practitioner may only make an Assessment Order if he or she has examined the prospective patient in the 24 hour period before the Order is made.
- The examination may be conducted by any method that is sanctioned by, or that is consistent with, the operational protocols of the facility from which the examination is conducted. If sanctioned by the facility, this may involve video conferencing.

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Assessment criteria

- A medical practitioner may only make an Assessment Order if satisfied from the examination that the person needs to be assessed against the assessment criteria.
- The assessment criteria are:
 - The person has, or appears to have, a mental illness that requires or is likely to require treatment for the person's health or safety or the safety of others, and
 - The person cannot be properly assessed with regard to the mental illness or the making of a Treatment Order except under authority of the Assessment Order, and
 - The person does not have decision making capacity.
- The terms "mental illness" and "decision making capacity" are defined in the Act.

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Reasonable attempt

- A medical practitioner may only make an Assessment Order if satisfied that a reasonable attempt to have the person assessed with informed consent has failed or that it would be futile or inappropriate to make an attempt to have the person assessed with informed consent.
- This is consistent with the Act's objects which require the promotion of voluntary over involuntary assessment and the making of free and informed assessment and treatment choices, and with the Act's principles which require medical practitioners to interfere with or restrict the rights of people with mental illness in the least restrictive setting way and to the least extent consistent with matters including protecting the person and others.
- The circumstances in which a person's consent to assessment may be taken as informed are set out in section 8 of the Act.

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Independent assessment

- An Assessment Order is authority for the patient to be assessed, without informed consent, by an approved medical practitioner (generally, a psychiatrist).
- The assessment must occur within 24 hours of the Assessment Order taking effect.
- The approved medical practitioner who assesses the person must be a different person to the medical practitioner who made the Assessment Order, and to the medical practitioner who applied for the Order (if relevant).
- After the assessment, the approved medical practitioner must either affirm - or discharge - the Assessment Order.

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How long do Assessment Orders last for?

- An Assessment Order that is:
 - Not affirmed by an approved medical practitioner, or
 - Affirmed by an approved medical practitioner but not extended in operationlasts for up to 24 hrs - unless the Order is discharged or a Treatment Order is made for the patient while the Order is in operation.
- An Assessment Order that is affirmed by an approved medical practitioner and extended in operation lasts until the end of the period of extension - unless the Order is discharged or a Treatment Order is made for the patient while the Order is in operation.

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Affirmation (and extension)

- To affirm an Assessment Order, the approved medical practitioner must be satisfied that:
 - The patient meets the assessment criteria, and
 - The Assessment Order has not already been discharged.
- An approved medical practitioner who affirms an Assessment Order may also extend the Order's operation for an additional period of up to 72 hrs.
- The period of extension commences from the time of affirmation.

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Discharge

- An Assessment Order may be discharged at any time for sufficient cause by:
 - The medical practitioner who made the Order, or
 - Any approved medical practitioner, or
 - The Tribunal – either on review or when making a Treatment Order for the person.
- A medical practitioner or approved medical practitioner has sufficient cause discharge an Assessment Order if he or she is satisfied, after examining the patient or on other reasonable grounds, that the patient does not meet the assessment criteria.

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Medical practitioner obligations – making an Assessment Order

- A medical practitioner who makes an Assessment Order is to:
 - Give a copy of the Order to the patient
 - Give the patient a Statement of Rights
 - Give a copy of the Order to either
 - The approved medical practitioner who is likely to independently assess the person, or
 - The controlling authority of the facility where the patient is going to be independently assessed, or is likely to be independently assessed.
 - Place a copy of the Order on the patient's clinical record or create a record if one does not exist.

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Approved medical practitioner obligations – affirming an Assessment Order

- On affirming an Assessment Order an approved medical practitioner is to:
 - Give notice of the affirmation (and extension) to the patient, and to the medical practitioner who made the Order, the Chief Civil Psychiatrist and the Mental Health Tribunal
 - If the patient is to be, or is likely to be, assessed in an approved facility – give a copy of the affirmation (and extension) to the controlling authority
 - Place a copy of the instrument of affirmation on the patient's clinical record, and ensure that a record is created if one does not already exist.

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Medical practitioner obligations – discharging an Assessment Order

- A medical practitioner (or approved medical practitioner) who discharges an Assessment Order is to:
 - Give a copy of the discharge paper to the patient, the Chief Civil Psychiatrist and the Mental Health Tribunal
 - If the patient has not yet been independently assessed by an approved medical practitioner, give a copy of the discharge paper to either:
 - The approved medical practitioner who was expected to do the independent assessment, or
 - The controlling authority of the approved facility where the independent assessment was to have been done
 - Place a copy of the discharge paper on the patient's clinical record.
- The medical practitioner (or approved medical practitioner) is also required to give the patient a Statement of Rights.

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Useful resources

- The *Mental Health Act 2013* can be accessed at [Tasmanian Legislation Online](#)
- A range of useful information about the Act is available to read, download and print from [the Mental Health Act website](#) including:
 - Approved Forms (see in particular Chief Civil Psychiatrist Approved Form 6 Assessment Order)
 - Flowcharts
 - Standing Orders and Clinical Guidelines
 - Online Training Packages and other Education Resources
 - A Clinician's Guide to the *Mental Health Act 2013*
 - Fact Sheets and other Information for Consumers
 - Statements of Rights

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Questions

Any questions?

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