

Assessment Orders

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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Assessment is defined in section 5 of the Act as the clinical process involved in diagnosing the condition of a person's mental health and, where necessary, identifying the most appropriate treatment.

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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There are five approved hospitals in Tasmania – the Royal Hobart Hospital, the Launceston General Hospital, the North West Regional Hospital (Burnie Campus), the Millbrook Rise Centre and the Roy Fagan Centre.

Each of the approved hospitals is also an approved assessment centre.

The North West Regional Hospital (Mersey Campus) is NOT an approved hospital or an approved assessment centre.

An Assessment Order will only be authority for the person to be admitted to and detained in an approved hospital if this is specified in the Order.

Urgent Circumstances Treatment is treatment that is urgently needed in the patient's best interests and that is given without informed consent or Tribunal authorisation. Treatment of this type can be given to a person who is subject to an Assessment Order, provided the treatment is authorised by an approved medical practitioner in accordance with section 55 of the Act.

55. Urgent circumstances treatment

(1) An involuntary patient may be given treatment (***urgent circumstances treatment***) without informed consent or Tribunal authorisation if an approved medical practitioner authorises the treatment as being urgently needed in the patient's best

interests.

(2) An approved medical practitioner may, under [subsection \(1\)](#), authorise treatment as being urgently needed in the patient's best interests only if the approved medical practitioner is of the opinion that achieving the necessary treatment outcome would be compromised by waiting for the urgent circumstances treatment to be authorised by the Tribunal (or by a member thereof on an interim basis).

(3) An approved medical practitioner may give the authorisation if, and only if, he or she has concluded from an examination that:

- (a)** the patient has a mental illness that is generally in need of treatment; and
- (b)** the urgent circumstances treatment is necessary for:
 - (i)** the patient's health or safety; or
 - (ii)** the safety of other persons; and
- (c)** the urgent circumstances treatment is likely to be effective and appropriate in terms of the outcomes referred to in section 6(1); and
- (d)** achieving the necessary treatment outcome would be compromised by waiting for the urgent circumstances treatment to be authorised by the Tribunal (or by a member thereof on an interim basis).

(4) The advice under subsection (5) may be given by any means of communication the approved medical practitioner considers appropriate in the circumstances but, if it is given orally, the approved medical practitioner is to confirm it in writing by means of a CCP approved form.

(5) If the authorisation is given, the approved medical practitioner has the following obligations:

- (a)** to ensure that the patient is advised of the authorisation as soon as possible after it is given;
- (ab)** to give a copy of the authorisation to the CCP and the Tribunal;
- (ac)** to give a copy of the authorisation to the patient (together with a statement of rights in a CCP approved form);
- (b)** to place a copy of the authorisation on the patient's clinical record.

(6) If the authorisation is given, the patient may be given the urgent circumstances treatment until whichever of the following first occurs:

- (a)** the treatment is completed;
- (b)** an approved medical practitioner, for any reason he or she considers sufficient, stops the treatment;
- (c)** the 96-hour period immediately following the giving of the authorisation expires;
- (d)** the assessment order, treatment order or interim treatment order ceases or is discharged;
- (e)** the authorisation is set aside by the Tribunal.

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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24. Determination of application for assessment order

(1) A medical practitioner may make an assessment order in respect of a person in, and only in, the following circumstances:

- (a)** the medical practitioner must have examined the person;
- (b)** the examination must have been done in the 24-hour period immediately before the assessment order is made;
- (c)** the medical practitioner must be satisfied from the examination that the person needs to be assessed against the assessment criteria;
- (d)** 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 make such an attempt.

(2) A medical practitioner may make an assessment order authorising a patient's admission to, and detention in an approved hospital.

(3) Despite [subsection \(2\)](#), a medical practitioner is not to make an assessment order authorising a patient who is a child to be admitted to, and detained in an approved hospital unless the medical practitioner is satisfied that the hospital –

- (a)** has facilities and staff for the assessment of the patient; and
- (b)** is, in the circumstances, the most appropriate place to accommodate the patient.

(4) A medical practitioner may make an assessment order without having received an application for the order.

28. When does assessment order take effect?

An assessment order takes effect as soon as it is signed by the medical practitioner who makes it.

Note The making of an assessment order is reviewable by the Tribunal – see [Division 2](#) of [Part 3](#) of [Chapter 3](#).

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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23. Application for assessment order

(1) Any of the following persons may apply to a medical practitioner for an assessment order:

- (a) another medical practitioner;
- (b) a nurse;
- (c) an MHO;
- (d) a police officer;
- (e) a guardian, parent or support person of the person (the **prospective patient**) in respect of whom the application is made;
- (f) an ambulance officer;
- (g) a person prescribed by the regulations.

(2) However, the application should only be made if –

- (a) the applicant is satisfied from a personal knowledge of the prospective patient that the prospective patient has or might have a mental illness; and
- (b) 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.

In the case of a medical practitioner, the applicant must be a different person to the person who makes the Assessment Order.

In the case of a General Practitioner the applicant may be a practice nurse.

In the case of Department of Emergency Medicine presentations the applicant may be a family member, member of nursing staff or a member of medical staff.

In the case of presentations of people in Protective Custody the applicant may be a Mental Health Officer or Police Officer.

An applicant may be satisfied that a prospective patient has or might have a mental illness on the basis of observations, or information provided about the person's behaviour by someone the applicant considers to be reputable.

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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211. Remote medical procedures

(1) For the purposes of this Act, a medical procedure may be carried out in person or by any available technical means sanctioned by or consistent with –

- (a) the operational protocols of the facility from or in which the procedure is carried out; or
- (b) any clinical guidelines; or
- (c) any standing orders.

(2) In this section –

medical procedure includes assessment, examination, diagnosis and treatment;

technical means includes video conferencing.

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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25. Assessment criteria

The assessment criteria are –

- (a) the person has, or appears to have, a mental illness that requires or is likely to require treatment for –
 - (i) the person's health or safety; or
 - (ii) the safety of other persons; and
- (b) the person cannot be properly assessed with regard to the mental illness or the making of a treatment order except under the authority of the assessment order; and
- (c) the person does not have decision-making capacity.

4. Meaning of *mental illness*

(1) For the purposes of this Act –

- (a) a person is taken to have a mental illness if he or she experiences, temporarily, repeatedly or continually –
 - (i) a serious impairment of thought (which may include delusions); or
 - (ii) a serious impairment of mood, volition, perception or cognition; and
- (b) nothing prevents the serious or permanent physiological, biochemical or psychological effects of alcohol use or drug-taking from being regarded as an indication that a person has a mental illness.

(2) However, under this Act, a person is not to be taken to have a mental illness by reason only of the person's –

- (a) current or past expression of, or failure or refusal to express, a particular political opinion or belief; or
- (b) current or past expression of, or failure or refusal to express, a particular religious opinion or belief; or
- (c) current or past expression of, or failure or refusal to express, a particular philosophy; or
- (d) current or past expression of, or failure or refusal to express, a particular sexual preference or orientation; or
- (e) current or past engagement in, or failure or refusal to engage in, a particular political or religious activity; or
- (f) current or past engagement in a particular sexual activity or sexual promiscuity; or
- (g) current or past engagement in illegal conduct; or
- (h) current or past engagement in an antisocial activity; or
- (i) particular economic or social status; or
- (j) membership of a particular cultural or racial group; or
- (k) intoxication (however induced); or
- (l) intellectual or physical disability; or
- (m) acquired brain injury; or
- (n) dementia; or
- (o) temporary unconsciousness.

7. Capacity of adults and children to make decisions about their own assessment and treatment

(1) For the purposes of this Act, an adult is taken to have the capacity to make a decision about his or her own assessment or treatment (***decision-making capacity***) unless a person or body considering that capacity under this Act is satisfied that –

- (a) he or she is unable to make the decision because of an impairment of, or disturbance in, the functioning of the mind or brain; and
- (b) he or she is unable to –
 - (i) understand information relevant to the decision; or
 - (ii) retain information relevant to the decision; or
 - (iii) use or weigh information relevant to the decision; or
 - (iv) communicate the decision (whether by speech, gesture or other means).

(2) For the purposes of this Act, a child is taken to have the capacity to make a decision about his or her own assessment or treatment (***decision-making capacity***) only if a person or body considering that capacity under this Act is satisfied that –

- (a) the child is sufficiently mature to make the decision; and
- (b) notwithstanding any impairment of, or disturbance in, the functioning of the child's mind or brain, the child is able to –

- (i) understand information relevant to the decision; and
- (ii) retain information relevant to the decision; and
- (iii) use or weigh information relevant to the decision; and
- (iv) communicate the decision (whether by speech, gesture or other means).

(3) For the purposes of this section –

(a) an adult or child may be taken to understand information relevant to a decision if it reasonably appears that he or she is able to understand an explanation of the nature and consequences of the decision given in a way that is appropriate to his or her circumstances (whether by words, signs or other means); and

(b) an adult or child may be taken to be able to retain information relevant to a decision even if he or she may only be able to retain the information briefly.

(4) In this section –

information relevant to a decision includes information on the consequences of –

(a) making the decision one way or the other; and

(b) deferring the making of the decision; and

(c) failing to make the decision.

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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12. Objects of Act

The objects of this Act are as follows:

- (a) to provide for the assessment and treatment of persons with mental illnesses;
- (b) to provide for appropriate oversight and safeguards in relation to such assessment and treatment;
- (c) to give everyone involved with such assessment and treatment clear direction as to their rights and responsibilities;
- (d) to provide for such assessment and treatment to be given in the least restrictive setting consistent with clinical need, legal and judicial constraints, public safety and patient health, safety and welfare;
- (e) to promote voluntary over involuntary assessment and treatment and the making of free and informed assessment and treatment choices;
- (f) to provide for all incidental and ancillary matters.

Schedule 1. Mental Health Service Delivery Principles

The mental health service delivery principles are as follows:

- (a) to respect, observe and promote the inherent rights, liberty, dignity, autonomy and self-respect of persons with mental illness;
- (b) to interfere with or restrict the rights of persons with mental illness in the least restrictive way and to the least extent consistent with the protection of

those persons, the protection of the public and the proper delivery of the relevant service;

(c) to provide a service that is comprehensive, accessible, inclusive, equitable and free from stigma;

(d) to be sensitive and responsive to individual needs (whether as to culture, language, age, religion, gender or other factors);

(e) to emphasise and value promotion, prevention and early detection and intervention;

(f) to seek to bring about the best therapeutic outcomes and promote patient recovery;

(g) to provide services that are consistent with patient treatment plans;

(h) to recognise the difficulty, importance and value of the role played by families, and support persons, of persons with mental illness;

(i) to recognise, observe and promote the rights, welfare and safety of the children and other dependants of persons with mental illness;

(j) to promote the ability of persons with mental illness to make their own choices;

(k) to involve persons receiving services, and where appropriate their families and support persons, in decision-making;

(l) to recognise families, and support persons, of persons with mental illness as partners, with mental health service providers, in the provision of their treatment and care to the extent that this is appropriate and consistent with their own wishes;

(m) to respect the wishes of persons receiving services, and the wishes of their families and support persons, to the maximum extent consistent with the health and safety of those persons and the safety of others;

(n) to promote and enable persons with mental illness to live, work and participate in their own community;

(o) to operate so as to raise community awareness and understanding of mental illness and to foster community-wide respect for the inherent rights, liberty, dignity, autonomy and self-respect of persons with mental illness;

(p) to be accountable;

(q) to recognise and be responsive to national and international clinical, technical and human rights trends, developments and advances.

8. Meaning of *informed consent* to assessment or treatment

(1) For the purposes of this Act, a medical practitioner may regard a person's consent to an assessment or a treatment as being informed consent if satisfied that –

(a) the person, at the time of giving the consent, has decision-making capacity; and

(b) the person has had a reasonable opportunity to make a considered decision whether or not to give the consent; and

(c) the person, having had that opportunity, has given the consent freely by some positive means, not by mere acquiescence.

- (2) For the purposes of [subsection \(1\)\(b\)](#) in its application to a treatment, a person may be taken to have had the requisite reasonable opportunity if –
- (a) the treating medical practitioner and the person have discussed the treatment; and
 - (b) in those discussions the person was given an opportunity to disclose his or her priorities, expectations and fears about the treatment; and
 - (c) following those discussions the person was given –
 - (i) a clear and candid explanation of the advantages and disadvantages of the treatment, including information about the associated risks and common or expected side effects; and
 - (ii) where applicable, a clear and candid explanation of the alternative treatments that may be available, including information about the associated advantages and disadvantages; and
 - (iii) clear and candid answers to any questions the person may have had; and
 - (iv) any other information that was considered, by the treating medical practitioner or person, to be of relevant importance and likely to influence the person's decision-making with regard to the treatment; and
 - (v) a reasonable opportunity to –
 - (A) obtain independent medical or other advice; and
 - (B) consider the advantages and disadvantages of giving the consent.

(3) For the purposes of [subsection \(1\)\(c\)](#), a person is taken to have given consent freely if the consent is given without coercion, pressure or undue influence, whether from another person or a medication.

(4) For the purposes of [subsection \(2\)](#), the information, explanations or answers must have been in a language and form that the person could understand.

(5) Nothing in this Act is to be taken to prevent a person with decision-making capacity from withdrawing his or her consent to an assessment or a treatment before the assessment or treatment is made or provided and, if he or she does so, he or she is not to be taken to have given informed consent to the assessment or treatment.

For a child who does not have decision making capacity, consent may be given by a parent – see section 9 of the Act.

9. Informed consent for child who lacks capacity to decide on own assessment or treatment

(1) For the purposes of this Act, informed consent for the assessment or treatment of a child who lacks decision-making capacity may be given by a parent of the child.

(2) To avoid doubt, for [subsection \(1\)](#) the informed consent of one parent is sufficient.

(3) Informed consent for the assessment or treatment of a child who lacks decision-making capacity may be withdrawn before the assessment or treatment is made or provided, but only by each parent of the child consenting to the withdrawal of consent.

(4) Nothing in this Act is to be taken to prevent the withdrawal under [subsection \(3\)](#) of consent to an assessment or a treatment before the assessment or treatment is made or provided and, if the consent is withdrawn, informed consent is not to be taken to have been given to the assessment or treatment.

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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30. Assessment of patient

(1) Once an assessment order has taken effect, the patient must be independently assessed within 24 hours unless the order is sooner discharged.

(2) For the purposes of [subsection \(1\)](#), an assessment is independent if and only if it is done by an approved medical practitioner other than the medical practitioner who applied for or made the assessment order.

Note A failure to observe [subsection \(1\)](#) extinguishes the order – see [section 34](#).

32. Affirmation or discharge of assessment order

(1) This section applies once a patient who is subject to an assessment order has been independently assessed by an approved medical practitioner.

(2) The approved medical practitioner must immediately affirm or discharge the assessment order.

(3) To affirm the assessment order, the approved medical practitioner must be satisfied that –

- (a) the patient meets the assessment criteria; and
- (b) the order has not already been discharged.

(4) If the approved medical practitioner affirms the assessment order, he or she may simultaneously extend its operation, once, by a period not exceeding 72 hours commencing from the time of affirmation.

(5) The affirmation is to be effected by means of a signed instrument in writing in a CCP approved form, and is invalid if not in that form.

(6) The instrument of affirmation takes effect as soon as it is signed.

(7) If the approved medical practitioner affirms the assessment order, the procedure in [section 33](#) is to be followed.

(8) If the approved medical practitioner discharges the assessment order, the procedure in [section 35\(3\)](#) and [\(4\)](#) is to be followed.

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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34. Duration of assessment order

An assessment order ceases to have effect –

(a) 24 hours after it takes effect if, by then –

(i) it has not been affirmed under [section 32](#); or

(ii) it has been affirmed under [section 32](#) but not extended in operation under that section; or

(b) if it is affirmed under [section 32](#) and extended in operation under that section, at the end of the period of extension; or

(c) if it is sooner discharged under [section 35](#); or

(d) if a treatment order is made in respect of the person who is subject to the assessment order.

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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32. Affirmation or discharge of assessment order

(1) This section applies once a patient who is subject to an assessment order has been independently assessed by an approved medical practitioner.

(2) The approved medical practitioner must immediately affirm or discharge the assessment order.

(3) To affirm the assessment order, the approved medical practitioner must be satisfied that –

- (a)** the patient meets the assessment criteria; and
- (b)** the order has not already been discharged.

(4) If the approved medical practitioner affirms the assessment order, he or she may simultaneously extend its operation, once, by a period not exceeding 72 hours commencing from the time of affirmation.

(5) The affirmation is to be effected by means of a signed instrument in writing in a CCP approved form, and is invalid if not in that form.

(6) The instrument of affirmation takes effect as soon as it is signed.

(7) If the approved medical practitioner affirms the assessment order, the procedure

in [section 33](#) is to be followed.

(8) If the approved medical practitioner discharges the assessment order, the procedure in [section 35\(3\)](#) and [\(4\)](#) is to be followed.

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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35. Discharge of assessment order by medical practitioner or Tribunal

(1) An assessment order may be discharged at any time for sufficient cause by –

- (a) the medical practitioner who made it; or
- (b) any approved medical practitioner; or
- (c) the Tribunal under [section 180](#).

(2) A medical practitioner has sufficient cause to 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.

(3) In the case of a medical practitioner, the discharge is to be effected by means of a signed instrument in writing in a CCP approved form (the **discharge paper**).

(4) A medical practitioner who discharges an assessment order is to –

- (a) give a copy of the discharge paper to –
 - (i) the patient; and
 - (ii) the CCP; and
 - (iii) the Tribunal; and
 - (iv) if the relevant independent assessment has not been done, the approved medical practitioner who was expected to do the assessment or, if applicable, the controlling authority of the approved facility where the assessment was to have been done; and

(b) place a copy of the discharge paper on the patient's clinical record.

Note For a Tribunal discharge – see [Division 2](#) of [Part 3](#) of [Chapter 3](#).

180. Review of assessment order

The following provisions govern the review of the making of an assessment order:

- (a)** the Tribunal may review the making of the order at any time –
 - (i)** on its own motion; or
 - (ii)** on the application of any person with the necessary standing;
- (b)** the Tribunal may review the making of the order even if it is no longer in effect;
- (c)** the Tribunal may also review the making of any other assessment order, concerning the same patient, at the same time;
- (d)** on review, the Tribunal may affirm the order or, if it is still in effect, discharge the order;
- (e)** the Tribunal is to –
 - (i)** give a copy of its determination to the patient (together with a statement of rights in an MHT approved form); and
 - (ii)** give a copy of its determination to the CCP; and
 - (iii)** if the order is still in effect and requires the patient's admission to an approved facility, give a copy of the determination to the controlling authority.

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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29. Action to be taken by medical practitioner on making assessment order

A medical practitioner who makes an assessment order is to –

- (a) give a copy of the order to the patient (together with a statement of rights in a CCP approved form); and
- (b) give a copy of the order to the approved medical practitioner who is likely to do the assessment or, if applicable, the controlling authority of the approved facility where the patient is to be, or is likely to be, assessed; and
- (c) place a copy of the order on the patient's clinical record (ensuring that such a clinical record is created if one does not already exist).

The medical practitioner is required to discharge these obligations as soon as practicable after making the Assessment Order and in accordance with the service requirements set out in section 224 of the Act.

11. Timing of actions

(1) Where this Act requires a person to take an action to be taken, then, unless the contrary intention appears, the action must be taken as soon as practicable.

(2) For the purposes of [subsection \(1\)](#) –

- (a) it is irrelevant whether the requirement is mandatory or directory; and
- (b) it is irrelevant how the requirement is expressed or described.

226. Service of documents

(1) A notice or other document that is required to be given or served under this Act is effectively given or served if –

(a) in the case of a natural person who is –

(i) a voluntary inpatient; or

(ii) a forensic patient; or

(iii) an involuntary patient who is being detained in an approved facility under the authority of an assessment order or a treatment order – the document is given to the person; or

(b) in the case of any other natural person, the document is –

(i) given to the person; or

(ii) left at, or sent by post to, the person's postal or residential address or place or address of business or employment last known to the server of the document; or

(iii) faxed to the person's fax number; or

(iv) emailed to the person's email address; or

(c) in the case of any other person, it is –

(i) left at, or sent by post to, the person's principal or registered office or principal place of business; or

(ii) faxed to the person's fax number; or

(iii) emailed to the person's email address.

(2) For the purposes of this section –

“give”, in relation to a notice or other document, includes cause the notice or other document to be given.

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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33. Action to be taken by medical practitioner on affirming assessment order

- (1) An approved medical practitioner who affirms an assessment order is to –
- (a) give notice to that effect to –
 - (i) the patient; and
 - (ii) the medical practitioner who made the order; and
 - (iii) the CCP; and
 - (iv) the Tribunal; and
 - (v) if the patient is to be, or is likely to be, assessed in an approved facility, the controlling authority of the facility; and
 - (b) place a copy of the instrument of affirmation on the patient's clinical record (ensuring that such a clinical record is created if one does not already exist).

- (2) The notice under [subsection \(1\)\(a\)](#) is to advise of any extension of the operation of the assessment order.

The medical practitioner is required to discharge these obligations as soon as practicable after making the Assessment Order and in accordance with the service requirements set out in section 224 of the Act.

11. Timing of actions

- (1) Where this Act requires a person to take an action to be taken, then, unless the

contrary intention appears, the action must be taken as soon as practicable.

(2) For the purposes of [subsection \(1\)](#) –

- (a)** it is irrelevant whether the requirement is mandatory or directory; and
- (b)** it is irrelevant how the requirement is expressed or described.

226. Service of documents

(1) A notice or other document that is required to be given or served under this Act is effectively given or served if –

(a) in the case of a natural person who is –

- (i)** a voluntary inpatient; or
- (ii)** a forensic patient; or
- (iii)** an involuntary patient who is being detained in an approved

facility under the authority of an assessment order or a treatment order – the document is given to the person; or

(b) in the case of any other natural person, the document is –

- (i)** given to the person; or
- (ii)** left at, or sent by post to, the person’s postal or residential address or place or address of business or employment last known to the server of the document; or
- (iii)** faxed to the person’s fax number; or
- (iv)** emailed to the person’s email address; or

(c) in the case of any other person, it is –

- (i)** left at, or sent by post to, the person’s principal or registered office or principal place of business; or
- (ii)** faxed to the person’s fax number; or
- (iii)** emailed to the person’s email address.

(2) For the purposes of this section –

“**give**”, in relation to a notice or other document, includes cause the notice or other document to be given.

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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35. Discharge of assessment order by medical practitioner or Tribunal

- (1) An assessment order may be discharged at any time for sufficient cause by –
- (a) the medical practitioner who made it; or
 - (b) any approved medical practitioner; or
 - (c) the Tribunal under [section 180](#).

(2) A medical practitioner has sufficient cause to 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.

(3) In the case of a medical practitioner, the discharge is to be effected by means of a signed instrument in writing in a CCP approved form (the **discharge paper**).

- (4) A medical practitioner who discharges an assessment order is to –
- (a) give a copy of the discharge paper to –
 - (i) the patient; and
 - (ii) the CCP; and
 - (iii) the Tribunal; and
 - (iv) if the relevant independent assessment has not been done, the approved medical practitioner who was expected to do the assessment or, if applicable, the controlling authority of the approved facility where the assessment was to have been done; and

(b) place a copy of the discharge paper on the patient's clinical record.

Note For a Tribunal discharge – see [Division 2](#) of [Part 3](#) of [Chapter 3](#).

The medical practitioner is required to discharge these obligations as soon as practicable after making the Assessment Order and in accordance with the service requirements set out in section 224 of the Act.

11. Timing of actions

(1) Where this Act requires a person to take an action to be taken, then, unless the contrary intention appears, the action must be taken as soon as practicable.

(2) For the purposes of [subsection \(1\)](#) –

- (a) it is irrelevant whether the requirement is mandatory or directory; and
- (b) it is irrelevant how the requirement is expressed or described.

226. Service of documents

(1) A notice or other document that is required to be given or served under this Act is effectively given or served if –

(a) in the case of a natural person who is –

- (i) a voluntary inpatient; or
- (ii) a forensic patient; or
- (iii) an involuntary patient who is being detained in an approved facility under the authority of an assessment order or a treatment order – the document is given to the person; or

(b) in the case of any other natural person, the document is –

- (i) given to the person; or
- (ii) left at, or sent by post to, the person's postal or residential address or place or address of business or employment last known to the server of the document; or
- (iii) faxed to the person's fax number; or
- (iv) emailed to the person's email address; or

(c) in the case of any other person, it is –

- (i) left at, or sent by post to, the person's principal or registered office or principal place of business; or
- (ii) faxed to the person's fax number; or
- (iii) emailed to the person's email address.

(2) For the purposes of this section –

“give”, in relation to a notice or other document, includes cause the notice or other document to be given.

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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