

TASMANIA'S MENTAL HEALTH ACT

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

Chief Psychiatrist Approved



Outline

- Overview
- The Act's Objects and Principles
- Patient rights
- Information rights
- Statements of rights
- Documentation to be given
- Treatment plans, confidentiality, procedural rights
- Carer rights
- Useful resources
- Questions?

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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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The Act's Objects

- The Act should be interpreted and utilised in accordance with its objects
- The Act's objects include:
 - To provide for appropriate oversight and safeguards in relation to the assessment and treatment of people with mental illness
 - To give everyone involved with the assessment and treatment of people with mental illness clear direction as to their rights and responsibilities
 - To provide for the assessment and treatment of people with mental illness to be given in the least restrictive setting consistent with clinical need, legal and judicial constraints, public safety and patient health, safety and welfare
 - To promote voluntary over involuntary assessment and treatment and the making of free and informed assessment and treatment choices

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The Act's Principles

- People exercising responsibilities under the Act are required to have regard to the mental health service delivery principles
- The principles are out in Schedule 1 and include:
 - To respect, observe and promote the inherent rights, liberty, dignity, autonomy and self-respect of people with mental illness
 - To interfere with or restrict the rights of people with mental illness in the least restrictive way and to the least extent consistent with the protection of those people, the protection of the public and the proper delivery of the service
 - To promote the ability of people with mental illness to make their own choices and to involve people receiving services in decision making
 - To respect the wishes of people receiving services to the maximum extent consistent with the health and safety of those people and others

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The Act's Principles (cont.)

- To recognise the difficulty, importance and value of the role played by families, and support people, of people with mental illness
- To involve people receiving services, and where appropriate their families and support people, in decision making
- To recognise families and support people of people with mental illness as partners, with mental health service providers, in the provision of treatment and care to the extent that this is appropriate and consistent with the person's wishes
- To respect the wishes of people receiving services, and the wishes of their families and support people, to the maximum extent consistent with the health and safety of the person and the safety of others

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Involuntary and forensic patient rights slide 1

- Involuntary and forensic patients have specific rights under the legislation
- Every patient (whether involuntary or forensic) has the following rights:
 - The right to have restrictions on, and interference with, his or her dignity, rights, and freedoms kept to a minimum consistent with his or her health or safety and the safety of other people
 - The right to have his or her decision making capacity promoted, and his or her wishes respected, to the maximum extent consistent with his or her health or safety and the safety of others

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Involuntary and forensic patient rights slide 2

- The right, while in an approved hospital or secure mental health unit (as the case may be), to have access to current information about local, national and world events
- The right, while in an approved hospital or secure mental health unit, to be provided with general health care
- The right, while in an approved hospital or secure mental health unit, to apply for leave of absence in accordance with the Act
- The right not to be unreasonably deprived of any necessary physical or communication aids

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Involuntary and forensic patient rights slide 3

- The right, while in an approved hospital or secure mental health unit, to wear his or her own clothing
- The right, while in an approved hospital or secure mental health unit, to practice a religion of the patient's choice
- The right, while in an approved hospital or secure mental health unit, to practice customs in accordance with the patient's cultural beliefs or background
- The right to be given clear, accurate and timely information about his or her rights, the rules and conditions that apply in the hospital or secure mental health unit and the person's diagnosis and treatment

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Involuntary and forensic patient rights slide 4

- The right, while in an approved hospital or secure mental health unit, to ask for - and to be given - help from hospital and unit staff to enable the patient to enjoy his or her rights
- The right to have information given to him or her in a language or form that the patient understands, including through the assistance of an interpreter or an alternative or augmentative communication system if necessary

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Involuntary patient rights

- Involuntary patients have the following additional rights:
 - The right to have contact with, and to correspond privately with, the patient's representatives and support persons, and with Official Visitors
 - The right, while in an approved hospital, to be detained in a manner that suits the patient's assessment, treatment and care needs

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Forensic patient rights

- Forensic patients have the following additional rights:
 - The right to be provided with food that is adequate to maintain the patient's health and wellbeing, and a diet that is not unvarying
 - The right to be provided with special dietary food if the Chief Forensic Psychiatrist is satisfied that such food is necessary for medical reasons, on account of the patient's religious beliefs or because the patient is a vegetarian

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Forensic patient rights (cont.)

- The right to be provided with basic clean clothing that is suitable for the climate, of a suitable size and adequate to maintain the patient's health
- The right to adequate toilet arrangements, sanitary arrangements, light and ventilation
- The right to have access to legal advice
- The right to be provided with information about the rules and conditions which will govern the patient's behaviour in the secure mental health unit

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Statements of rights

- The Act requires a statement of rights to be given to a patient or prospective patient at particular points throughout the person's assessment and treatment pathway
- This includes when a person is taken to an approved assessment centre in protective custody and when an Assessment or Treatment Order is made
- A statement of rights is a written statement that sets out the rights that a patient or prospective patient has in particular circumstances

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Documentation

- The Act also requires patients and prospective patients to be provided with copies of important documentation at key points
- This includes copies of Assessment and Treatment Orders made, and copies of documentation authorising urgent circumstances treatment and the use of seclusion or restraint
- The documentation must be given directly to the patient or prospective patient as soon as is practicable in the circumstances

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Treatment Plans

- A treatment plan is an instrument that sets out an outline of the treatment that a patient is to receive
- The Act requires every involuntary patient to have a treatment plan
- A treatment plan is to be prepared in consultation with the patient
- Any variation to the plan also requires consultation with the patient

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Confidentiality

- The Act limits the circumstances in which confidential or personal information about a patient may be disclosed
- Confidential or personal information about a patient may only be disclosed if:
 - The disclosure is authorised or required by law, or by a Court
 - The patient consents to the disclosure
 - The patient's treating medical practitioner considers the disclosure to be necessary for the patient's treatment and care
 - The person making the disclosure reasonably considers it to be necessary to prevent or lessen a serious threat to public health or safety
 - Another circumstance referred to in section 134 of the Act applies

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Procedural rights

- Involuntary and forensic patients have a range of procedural rights under the Act, including:
 - The right to be a party to Tribunal proceedings, to institute or intervene in proceedings, and to attend hearings held in proceedings to which the patient is a party
 - The right to be given reasonable notice of each hearing
 - The right to appear at a hearing personally, or to be represented by an Australian legal practitioner, advocate or other person
 - The right to nominate a person as his or her representative

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Procedural rights slide 1

- The right to apply to the Mental Health Tribunal for review of:
 - The making of an Assessment Order
 - A Treatment Order
 - Urgent circumstances treatment, seclusion or restraint
 - If the patient is a forensic patient - the application of force
 - The withholding of information from the patient
 - The patient's transfer within Tasmania
 - Decisions about leave of absence
 - If the patient is an involuntary patient – the patient's admission to a secure mental health unit, and/or any extension of the period of time for which the patient may be detained in the unit

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Procedural rights slide 2

- If the patient is a forensic patient and also a prisoner or youth detainee – the patient's admission to a secure mental health unit and any decision by the Chief Forensic Psychiatrist to refuse to allow the patient to return to prison or youth detention
- Decisions about a forensic patient's visiting, telephone or correspondence rights
- The right to apply to the Tribunal for a written statement of reasons, and to be provided with a statement if one is applied for
- The right to appeal to the Supreme Court from any Tribunal determination
- The right not to have information about his or her status as a patient published

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Carer involvement

- The Act recognises the role played by carers as follows:
 - A guardian, parent or support person of a person with mental illness may apply for an Assessment Order for that person
 - A carer, family member or support person of an involuntary patient may be consulted by a medical practitioner in the preparation or revision of the patient's treatment plan
 - A representative, support person or other person may be notified of a patient's admission to, transfer between, or discharge from, an approved hospital or secure mental health unit, and of matters related to the patient's leave of absence

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Carer involvement (cont.)

- A representative, support person or other person may be provided with personal or confidential information about a patient or prospective patient if the patient's treating medical practitioner considers this to be necessary for the patient's treatment or care
- A patient's support person, representative or other person may make a complaint to the Principal Official Visitor
- A patient's support person, representative or other person may ask the Principal Official Visitor to visit premises from which the patient is being provided with services under the legislation
- A patient's representative, or other person that the Tribunal considers has a proper interest in the matter, may institute or intervene in Tribunal proceedings

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Carer rights

- A patient's representative, or other person, who institutes or intervenes in Tribunal proceedings has the right to attend the hearings held in those proceedings, and to appear personally or be represented by an Australian legal practitioner, advocate or other person
- Representatives or support people have the right to have information given to them in a language or form that the representative or support person understands, including through the assistance of an interpreter or an alternative or augmentative communication system if necessary

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Carer rights (cont.)

- Parents of children with mental illness whose assessment and treatment is regulated by the Act also have the right to:
 - Provide, withdraw or refuse consent to the child's assessment or treatment if the child is assessed as lacking decision making capacity
 - Be given a copy of any documentation that the Act requires to be given to the child, unless the child objects to this occurring

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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
 - 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
- Mental Health Tribunal forms including Application for Review forms may be found on [the Mental Health Tribunal's website](#)

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Questions

Any questions?

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