

TASMANIA'S MENTAL HEALTH ACT

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

Chief Psychiatrist Approved



Outline

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Overview

- The *Mental Health Act 2013* regulates the involuntary assessment and treatment of people with mental illness, and the management of forensic patients
- The Act provides for protective custody, Assessment Orders, Treatment Orders and urgent circumstances treatment; regulates seclusion and restraint; and establishes the statutory offices of Chief Civil Psychiatrist and Chief Forensic Psychiatrist
- The Act also establishes Official Visitors and 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 are set out in section 12 and include:

- To provide for appropriate oversight and safeguards in relation to the assessment and treatment of people with mental illnesses
- To give everyone involved with the assessment and treatment of people with mental illnesses 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 also 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, 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 the person, the protection of the public and the proper delivery of the relevant service
- To recognise the difficulty, importance and value of the role played by families, and support persons, of people with mental illness
- To promote the ability of people with mental illness to make their own choices and to involve people receiving services, and where appropriate their families and support people, in decision making

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Admission to a secure mental health unit part I

- The Act establishes Tasmania's secure mental health unit the Wilfred Lopes Centre and provides for the Chief Forensic Psychiatrist
- The Act also provides for the management of forensic patients
- A forensic patient is defined in the Act as a person who has been admitted to a secure mental health unit under section 68 of the Act and who has not been discharged from the unit
- This includes:
 - People who have been ordered by a Court to be detained in a secure mental health unit rather than in prison while they are awaiting trial, during a trial or pending a sentencing decision (including people who are being detained for the purposes of assessment)

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Admission to a secure mental health unit part 2

- People who have been placed on a restriction order by a Court
- People subject to a supervision order who have breached or who are considered likely to breach the order and who have been apprehended and admitted to a secure mental health unit on this basis
- Sentenced prisoners and remandees with a mental illness or disability who have been admitted to a secure mental health unit from prison
- Sentenced detainees with a mental illness or disability who have been admitted to a secure mental health unit from Ashley Youth Detention Centre

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Involuntary patient admission

- Involuntary patients – including patients subject to Assessment Orders - may be transferred to and detained in a secure mental health unit in certain, limited circumstances
- Involuntary patients who are subject to Treatment Orders may be treated on the basis of the Order while in the secure mental health unit and the Treatment Order has effect as if it provided for the patient's detention in the secure mental health unit
- Involuntary patients who are admitted to the secure mental health unit are to be treated, for the purposes of the Act, as if they are forensic patients who are not subject to restriction orders

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Forensic patient movements

- A forensic patient may be:
 - Transferred from a secure mental health unit to a secure institution, approved hospital, health service or premises where a health service is provided
 - Brought before a Court to be dealt with according to the law (if the patient is charged with a new offence)
 - Allowed to leave a secure mental health unit temporarily to attend the taking of a deposition of a person who is dangerously ill and unable to travel
- A forensic patient who is transferred in this way is taken to be in the custody of the controlling authority of the secure mental health unit throughout the period of his or her transfer; and while he or she is being detained in the place of transfer
- The Act continues to apply throughout the forensic patient's transfer and detention in the place of transfer

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Forensic patient escort and transport

- A forensic patient may be placed under escort by an authorised person or police officer for the purposes of the patient's transfer to, from or between secure mental health units
- An authorised person or police officer who takes a forensic patient under escort may:
 - Enlist the assistance of any person
 - Use reasonable force against the patient if he or she resists being taken under escort, and against anyone else who may try to prevent the patient from being taken under escort
 - Transfer physical control of the patient to another authorised person or police officer

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Forensic patient escort – search and seizure

- An authorised person or police officer may take possession of, and safeguard, any medication, physical aid or other thing that the authorised person or police officer reasonably believes is or may be necessary to the patient's health, safety or welfare or to the patient's examination, assessment, treatment or care, when escorting or transporting a patient under the Act
- An authorised person or police officer may also conduct a frisk search or ordinary search of a forensic patient who is being escorted, if the authorised person or police officer reasonably suspects that the patient may be carrying anything that could be a danger to the patient or others, or that could assist the patient to escape
- Items found during a search may be seized and returned to the patient at a later point, given to another person, or disposed of as may be appropriate in the circumstances

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Forensic patient leave

- The Mental Health Tribunal may grant a forensic patient who is subject to a restriction order leave of absence from a secure mental health unit
- The Chief Forensic Psychiatrist may grant a forensic patient who is not subject to a restriction order, including an involuntary patient who has been admitted to a secure mental health unit under the Act, leave of absence from a secure mental health unit
- Leave may be granted:
 - For clinical reasons or personal reasons
 - For a particular purpose, or a particular period, or both
 - Unconditionally, or subject to conditions
- Leave that has been granted may be extended, varied or cancelled

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Forensic patient leave – eligible persons

- The Act provides eligible persons with the opportunity to make a submission in respect of a forensic patient's leave, including any extension or variation of leave that has been granted
- The Act also requires any eligible persons to be notified:
 - That the patient has been granted leave
 - Of the terms and conditions of any leave that has been granted
 - Of any extension, variation or cancellation of a forensic patient's leave
 - Of the forensic patient's final release or transfer to another secure mental health unit
- The controlling authority is required to notify the Secretary (Corrections) about the patient's leave or final release or transfer so that the Secretary (Corrections) can in turn notify any eligible persons

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Treatment framework

Generally speaking, the Act enables a person with mental illness to be given treatment in the following circumstances:

- For adults and children with decision-making capacity – if the adult or child gives informed consent to the treatment
- For children who lack decision making capacity – if the child's parent gives informed consent to the treatment, or if the treatment is authorised by the Mental Health Tribunal
- For adults who lack decision-making capacity – if the treatment is authorised by the Mental Health Tribunal
- For involuntary patients and forensic patients – if the treatment is authorised as urgent circumstances treatment
- If the treatment is special psychiatric treatment – if the treatment is authorised by the Mental Health Tribunal

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Treatment with informed consent

- Under the Act, a medical practitioner may regard a forensic patient's consent to treatment as being informed if the practitioner is satisfied that:
 - At the time of giving the consent, the patient has decision-making capacity, and
 - The patient has had a reasonable opportunity to make a considered decision about whether or not to give consent, and
 - The patient has given the consent freely by some positive means, not by mere acquiescence
- The tests for informed consent and decision making capacity are set out in sections 8 and 7 of the Act respectively

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Treatment authorised by the Mental Health Tribunal

- The Mental Health Tribunal may authorise treatment for a forensic patient if it is satisfied of the matters set out in section 88 of the Act
- This includes that:
 - The patient has a mental illness, and
 - Without the treatment, the mental illness will, or is likely to, seriously harm the patient's health or safety or the safety of other people, and
 - The treatment will be appropriate and effective in terms of the treatment outcomes referred to in section 6 of the Act, and
 - The patient does not have decision-making capacity
- The terms "mental illness", "decision-making capacity" and "treatment" are defined in sections 4, 7 and 6 of the Act respectively

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Treatment authorised by the Mental Health Tribunal - determination

- The Tribunal is required to consider an application for authorisation at a hearing conducted before three members of the Tribunal
- Treatment may be authorised unconditionally, or subject to conditions around time, method, supervision or otherwise
- A single member of the Tribunal may also authorise treatment for a forensic patient but only if the Tribunal member is satisfied of the matters set out in section 91 of the Act
- This includes that:
 - The Tribunal cannot immediately determine the matter, and
 - Achieving the necessary treatment outcomes would be compromised by waiting for the treatment to be authorised by the Tribunal at a hearing under section 88 of the Act

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Treatment authorised by the Mental Health Tribunal - duration

- Treatment that has been authorised by a single member of the Tribunal lasts for up to 14 days
- Treatment that has been authorised by the Mental Health Tribunal at a hearing lasts until the patient is discharged from the secure mental health unit, or until the Tribunal discharges the authorisation, whichever occurs first
- Tribunal authorisation that is still in force on the day that a forensic patient is discharged from a secure mental health unit automatically becomes a six month Treatment Order enabling the patient's ongoing treatment post-discharge from the unit

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Urgent circumstances treatment

- A forensic patient may be given 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
- Treatment may only be authorised if the practitioner is of the opinion that:
 - The patient has a mental illness that is generally in need of treatment
 - The urgent circumstances treatment is necessary for the patient's health or safety
 - The urgent circumstances treatment is likely to be effective and appropriate in terms of the treatment outcomes set out in section 6 of the Act, and
 - 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 of the Tribunal on an interim basis
- The treatment may be given for a maximum of 96 hours

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Seclusion and restraint

- The Act allows forensic patients to be secluded and restrained in certain, limited circumstances
- A forensic patient may only be secluded or restrained if the seclusion or restraint is authorised as being necessary:
 - To facilitate the patient's treatment or general health care
 - To ensure the patient's health or safety or the safety of other people
 - To provide for the management, good order or security of a secure mental health unit
 - To prevent the patient from destroying or damaging property
 - To prevent the patient's escape from lawful custody
 - To facilitate the patient's lawful transfer to or from another facility
 - For a reason sanctioned by Chief Forensic Psychiatrist Standing Orders

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Seclusion and restraint - authorisation

- Seclusion or restraint may only be authorised:
 - If the person authorising the seclusion or restraint is satisfied that it is a reasonable intervention in the circumstances
 - After less restrictive interventions and de-escalation techniques have been tried without success, or when these have been considered but excluded as inappropriate or unsuitable in the circumstances
 - Following as full a risk assessment as it is possible to conduct in the circumstances
 - After taking into account matters such as:
 - Whether de-escalation has been implemented
 - Whether "time out", or 1:1 nursing have been attempted
 - Whether PRN medication has been offered
 - How long the seclusion or restraint is expected to last for and the criteria that will be used to determine whether the seclusion or restraint should cease
 - The patient's post-seclusion or post-restraint plan

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Seclusion and restraint – requirements

- Patients who are secluded or restrained must be provided with:
 - Suitable clean clothing and bedding
 - Adequate sustenance
 - Adequate toilet and sanitary arrangements
 - Adequate ventilation and light
 - A means of summoning aid
- Patients who are secluded or restrained must not be deprived of physical aids or communication aids that the patient uses in communicating on a daily basis, except as may be strictly necessary for the patient's safety or the preservation of the aids for the patient's future use

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Use of force

- The Act allows force to be applied to forensic patients in certain, limited circumstances
- Force may only be applied by reason of the physical violence, resistance or disturbance of the patient, and if the force is necessary either for a prescribed reason or to place the patient in seclusion or under restraint
- Force may only be applied by a member of secure mental health unit staff, a medical practitioner, a nurse, an authorised person or a person who has or is entitled to take immediate lawful custody of the patient
- "Prescribed reason" is defined in section 92 of the Act

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Visiting, telephone and correspondence rights

- Under the Act, forensic patients have the right to:
 - Receive visitors or refuse to receive visitors
 - Make or refuse to make telephone calls
 - Receive or refuse to receive telephone calls
 - Send or refuse to send mail
 - Receive or refuse to receive mail
- The exercise of visiting, telephone and correspondence rights is reviewable by the Tribunal
- The CFP may also intervene with respect to the exercise of visiting, telephone and correspondence rights in relevant circumstances

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Visiting rights

- The Act regulates:
 - The circumstances in which a person may enter a secure mental health unit as a visitor, including the information that a visitor may be required to provide before being allowed entry
 - The circumstances in which a person may be refused entry to a secure mental health as a visitor, and when visits may be terminated
 - Police visits
- The Act also requires visitors to comply with directions and allows visitors who fail to comply with directions to be removed from the secure mental health unit, and if necessary, detained so that the visitor can be arrested by a police officer

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Telephone and correspondence rights

- The Act regulates the circumstances in which forensic patients may:
 - Make or refuse to make telephone calls (including text messages)
 - Receive or refuse to receive telephone calls (including text messages)
 - Send or refuse to send mail (including email)
 - Receive or refuse to receive mail (including email)
- In the case of telephone calls, the Act identifies the information that a caller may be required to provide before a call is allowed to proceed
- The Act also permits the controlling authority of the secure mental health unit, the Chief Forensic Psychiatrist or an authorised person to require any mail sent to or received by a forensic patient - other than mail sent to or by a privileged correspondent - to be opened and read by an authorised person

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Screens, searches and seizure

- The Act allows:
 - The Chief Forensic Psychiatrist to determine what may or may not be brought or sent into the secure mental health unit
 - Any person seeking entry to the secure mental health unit to be searched using remote or non-intrusive technical devices such as metal detectors, sensors and X-ray scanners or a combination of these devices
 - Searches to be carried out if necessary for the management, good order or security of the secure mental health unit or for the safety of people within the secure mental health unit
 - Things found during a search to be seized
- The Act identifies who can conduct a search, the way in which a search is to be conducted and the actions that must be taken following a search or decision to seize items found during a search

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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
 - Memorandum of Understanding for the Delivery of Services to People with Mental Illness

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Questions

Any questions?

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