

Involuntary Patient Leave



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 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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Leave generally

- Leave enables patients who are subject to either an Assessment Order or a Treatment Order which authorises the patient's detention in an approved hospital to be temporarily absent from the facility for personal or clinical reasons, with permission
- Leave may be granted by any approved medical practitioner and may be subject to conditions that the approved medical practitioner considers necessary or desirable for the patient's health or safety or the safety of other persons
- This may extend to a requirement that the patient be under escort during the leave, or a part of the leave
- Leave may not be granted for a continuous period of more than 14 days

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Leave is only required if the patient is leaving the hospital as a whole – for example a leave pass is not needed for the patient to visit the cafeteria.

60. Leave of absence from approved hospital

- (1)** An approved medical practitioner may grant an involuntary patient leave of absence from an approved hospital (“leave”).
- (2)** The leave may be granted for clinical or personal reasons.
- (3)** Leave for personal reasons may be granted only on the application of:
 - a) the patient; or
 - b) a person who, in the opinion of the approved medical practitioner, has a genuine interest in the patient's welfare.
- (3A)** Leave must not be granted for a continuous period of more than 14 days.
- (4)** The patient may ask any staff member of the approved hospital for help in making the request and the staff member is to –
 - a) render that help to the best of his or her ability; or
 - b) arrange for another staff member of the approved hospital to render that help.

(5) The leave is to be granted by means of an instrument in writing (the “**leave pass**”).

(6) The leave may be granted on such conditions as the approved medical practitioner considers necessary or desirable for the patient’s health or safety or the safety of other persons.

(7) Without limiting the generality of subsection (6), the patient may be required to be under escort during the leave or any portion thereof (in which case the custody and escort provisions apply).

(8) The approved medical practitioner is to ensure that the conditions are specified in the leave pass.

(9) Depending on when the leave is to be taken, the approved medical practitioner is to –

- a) give a copy of the leave pass to the patient in good time (together with a statement of rights in a CCP approved form); and
- b) give a copy of the leave pass in good time to –
 - i. the controlling authority of the relevant approved hospital; and
 - ii. if applicable, the patient’s escort; and
 - iii. the Tribunal; and
 - iv. the CCP; and
- c) place a copy of the leave pass on the patient’s clinical record.

(10) Any approved medical practitioner may at any time, by notice to the patient –

- a) extend the leave (but not so as to let the total period of leave exceed a continuous period of 14 days); or
- b) vary the conditions of the leave; or
- c) cancel the leave.

(11) To avoid doubt –

- a) the power under subsection (10)(a) may be exercised more than once (but not so as to let the total period of leave exceed a continuous period of 14 days); and
- b) the power under subsection (10)(b) may be exercised more than once; and
- c) a notice under subsection (10) may be expressed to take immediate or deferred effect.

(12) On issuing a notice under subsection (10), an approved medical practitioner is to –

- a) give a copy of the notice to –
 - i. the controlling authority of the relevant approved hospital; and
 - ii. if applicable, the patient’s escort; and
 - iii. the Tribunal; and

- iv. the CCP; and
- a) place a copy of the notice on the patient's clinical record.

(13) An approved medical practitioner who refuses an application for leave under this section is to –

- a) give notice of the refusal, with reasons, to the applicant (together with a statement of rights in a CCP approved form); and
- b) if the applicant was someone other than the patient, give notice of the refusal, with reasons, to the patient (together with a statement of rights in a CCP approved form); and
- c) place a copy of the notice of refusal, with reasons, on the patient's clinical record.

Note 1. A leave of absence under this section is reviewable by the Tribunal – see Division 2 of Part 3 of Chapter 3. The power of review extends to every facet of such leave including refusal, cancellation and variation.

Note 2. The CCP has power to intervene in such circumstances – see section 147.

Personal leave

- Leave may be granted for personal reasons, including so that the patient can:
 - Visit a sick or dying relative or close friend
 - Attend the funeral, wedding or graduation of a relative or close friend
 - Attend a family occasion of special importance, a special religious event or service, or a reunion or commemoration
- Leave for personal reasons may only be granted on the application of the patient or other person who, in the opinion of the approved medical practitioner granting the leave, has a genuine interest in the patient's welfare
- A patient may ask any staff member at the approved hospital for help in applying for leave. If asked the staff member is to either help the patient, or arrange for another staff member to do so

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3. Interpretation

(1) In this Act, unless the contrary intention appears,

“personal reasons” for granting any patient a leave of absence under this Act include:

- (a) visiting a sick or dying relative or close friend; and
- (b) attending the funeral of a relative or close friend; and
- (c) attending a wedding or graduation of a relative or close friend; and
- (d) attending a family occasion of special importance; and
- (e) if the patient is an Aborigine, attending an event of cultural or spiritual significance to Aborigines; and
- (f) attending a special religious event or service; and
- (g) attending a reunion or commemoration.

Clinical leave

- Leave may also be granted for clinical reasons including:
 - Facilitating the patient’s rehabilitation or reintegration into the community; and
 - Furthering the patient’s treatment; and
 - Reasons deemed appropriate by the person authorised to grant the leave
- Leave for clinical reasons does not require an application

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3. Interpretation

(1) In this Act, unless the contrary intention appears,

“**clinical reasons**”, for granting any patient a leave of absence under this Act, include:

- (a) facilitating the patient’s rehabilitation or reintegration into the community; and
- (b) furthering the patient’s treatment; and
- (c) reasons deemed appropriate by the person authorised to grant the leave.

Extension, variation and cancellation

- Leave may be extended, varied or cancelled at any time, by any approved medical practitioner
- Leave may be extended or varied more than once, provided the total period of the leave does not exceed a continuous period of 14 days
- A notice of extension, variation or cancellation may have immediate or deferred effect

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Notice requirements

- The patient is to be given a copy of documentation granting him or her leave (the leave pass) as well as any notice to extend, vary or cancel the leave
- A copy of the leave pass and of any notice to extend, vary or cancel a patient's leave is also to be given to the controlling authority of the hospital from which the patient is being granted leave, the patient's escort (if there is an escort), the Tribunal, and the Chief Civil Psychiatrist

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Refusal of leave

- Leave may be refused
- An approved medical practitioner who refuses an application for leave must give notice of the refusal, with reasons, to the patient and to the person who applied for the leave, if this was someone other than the patient
- A decision to refuse to grant leave is reviewable by the Tribunal
- The Chief Civil Psychiatrist may also intervene under section 147 of the Act

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Failure to comply

- A patient who is absent without leave, and a patient who has failed to comply with a condition of leave, or whose leave has been cancelled or expired may be taken into protective custody and returned to the relevant approved hospital
- The patient's treating medical practitioner is to alert the Tribunal of the patient's absence or failure to comply, and of any cancellation or expiration of leave that has been granted
- The treatment medical practitioner may also alert the Commissioner of Police of the circumstances

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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

Information about the Mental Health Tribunal can be found on [the Mental Health Tribunal's website](#)

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Questions

Any questions?

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