Protective Custody, Transport And Escort

TASMANIA'S MENTAL HEALTH ACT

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

Tasmanian Government

Outline

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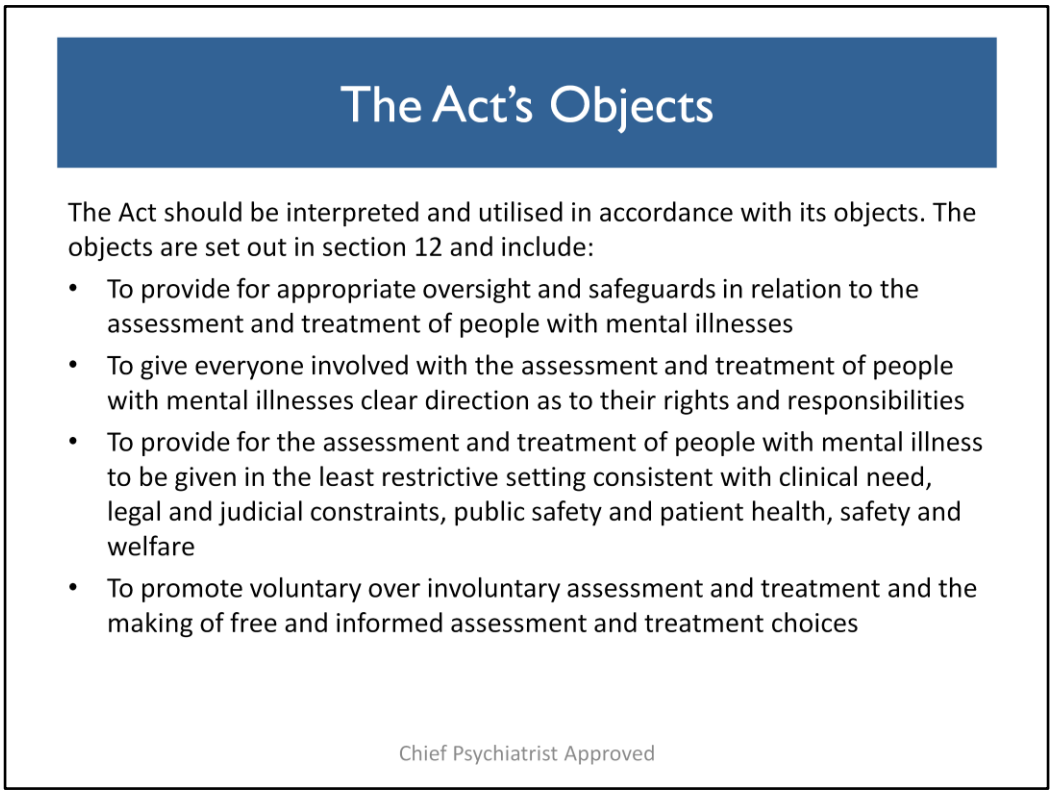
Overview of the *Mental Health Act 2013*

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.



The Act's objects and principles reflect international human rights instruments and national service delivery priorities. This includes the United Nations *Convention on the Rights of Persons with a Disability*, the *Fourth National Mental Health Plan* and the *National Mental Health Standards*.

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;

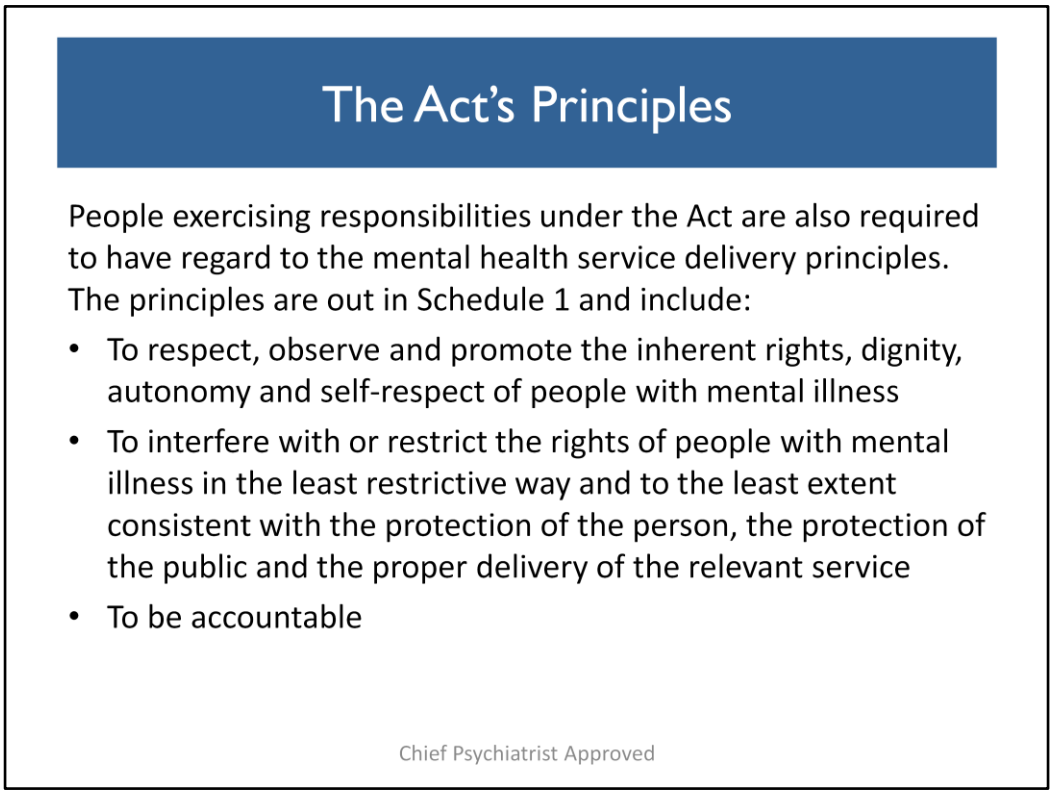
(b) to provide for appropriate oversight and safeguards in relation to such assessment and treatment;

(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.



15. Mental health service delivery principles

All persons exercising responsibilities under this Act are to have regard to the mental health service delivery principles set out in Schedule 1.

SCHEDULE 1 - Mental health service delivery principles

1. 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.

What is protective custody?

Protective custody is a coercive mechanism for getting a person who is believed to have a mental illness to a place where they can be examined by a medical practitioner, to see whether an Assessment Order or Treatment Order is needed.

Protective custody will often precede the making of an Assessment Order and/or Treatment Order for a person who is acutely unwell.

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Who can invoke protective custody?

Only a Mental Health Officer or a police officer can take a person into protective custody.

A Mental Health Officer is a person (such as a nurse, allied health worker or ambulance officer) who has been approved by a Chief Psychiatrist to perform protective custody and escort functions under the Act.

Only people with relevant skills, qualifications or experience can be approved.

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139. Mental health officers

(1) A Chief Psychiatrist, by instrument in writing, may approve individual persons (or all members of a class of persons) as mental health officers for –

(a) provisions of this Act within that Chief Psychiatrist's jurisdiction; and

(b) provisions of any other Act in respect of which that Chief Psychiatrist may have responsibilities.

(2) The persons (or, if applicable, each member of the class of persons) so approved must have skills, qualifications or experience relevant to the responsibilities of MHOs under the relevant statutory provisions.

(3) Subject to subsection (2), an approval may be conferred on –

(a) an individual (or class of) State Servant employed in the Department other than an ambulance officer; or

(b) with the consent of the Head of another State Service Agency, an individual (or class of) State Servant employed in that other State Service Agency; or

(c) with the consent of the Director of Ambulance Services under the *Ambulance Service Act 1982*, an individual (or class of) ambulance officer; or

(d) with the consent of the Commissioner of Police, an individual (or class of) police officer; or

(e) another individual (or class of) person.

(4) An approval is not to be taken for any purpose to constitute a State Service or Police Service appointment but –

(a) any State Servant or police officer may hold such an approval (either individually or as a member of a class) in conjunction with State Service or Police Service employment; and

(b) duties that any State Servant or police officer performs as an MHO are taken to be part of his or her duties as a State Servant or police officer.

(5) An approval –

(a) takes effect on the day on which it is conferred or on such later day as the relevant Chief Psychiatrist specifies in it; and

(b) unless sooner revoked, remains in effect for 5 years but may from time to time be re-conferred for an equivalent or lesser period.

(6) The relevant Chief Psychiatrist, by instrument in writing, may revoke an approval if he or she considers there are reasonable grounds to do so.

(7) An individual person, by notice to the relevant Chief Psychiatrist, may relinquish an approval at any time.

(8) In the case of a class approval –

(a) any member of the class ceases to be a member of the class if he or she ceases for any reason to have the characteristics of the class; but

(b) the approval remains in effect as regards the remaining members of the class.

(9) The relevant Chief Psychiatrist is to publish each approval and each revocation or relinquishment of an approval in the *Gazette* and in such other ways as he or she may consider appropriate.

(10) The relevant Chief Psychiatrist is to notify the Tribunal of each approval and each revocation or relinquishment of an approval.

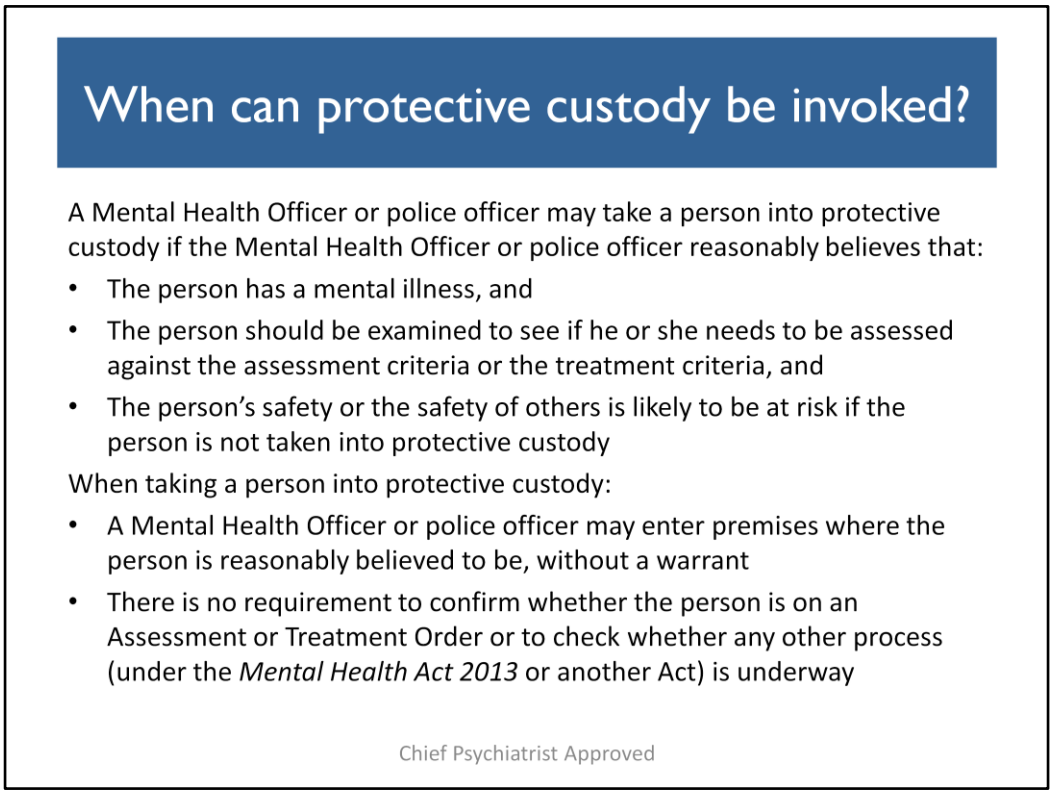
(11) The relevant Chief Psychiatrist –

(a) is to issue each MHO who is not a police officer or ambulance officer with an identity card which shows that he or she has that status and which the MHO may use and, if necessary, produce whenever acting in that capacity; and

(b) may issue such an identity card to each MHO who is a police officer or ambulance officer.

(12) If a person ceases to be an MHO, the relevant Chief Psychiatrist is to retrieve the person's identity card, if issued.

(13) A Chief Psychiatrist has, by virtue of his or her office, all the powers and functions of an MHO within that Chief Psychiatrist's jurisdiction.



A Mental Health Officer or police officer who enters premises is required to do as little damage as possible.

A Mental Health Officer or police officer may form the view that a person meets the protective custody criteria based on personal observation, or on the basis of information provided by another credible person (for example a close family member of the person, or the person's treating medical practitioner).

17. Power to take person into protective custody

(1) An MHO or police officer may take a person into protective custody if the MHO or police officer reasonably believes that –

(a) the person has a mental illness; and

(b) the person should be examined to see if he or she needs to be assessed against the assessment criteria or the treatment criteria; and

(c) the person's safety or the safety of other persons is likely to be at risk if the person is not taken into protective custody.

Note Mental illness has the meaning set out in section 4. The assessment and treatment criteria are set out in section 25 and section 40respectively.

(2) For the purposes of subsection (1) –

(a) no form of warrant is required; and

(b) the MHO or police officer is not required to confirm whether, under this

or any other Act, another process is in train in respect of the person; and
(c) the custody and escort provisions apply, and continue to apply while the person remains in protective custody.

The person has a mental illness

A Mental Health Officer or police officer may only take a person into protective custody if he or she reasonably believes that the person has a **mental illness**.

Mental illness is defined in section 4 of the Act and includes:

- People with temporary conditions
- People with episodic conditions
- People with mental illness that is the result of past alcohol use or drug taking
- People with mental illness and another condition (for example, an acquired brain injury)
- People with psychosis or serious mood disorders

Personality disorder does NOT generally fall under the Act.

The Mental Health Officer or police officer may form the belief that a person has a mental illness on the basis of the person's behaviour alone – a diagnosis is not required.

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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.

Assessment against the assessment criteria or treatment criteria

A Mental Health Officer or police officer may only take a person into protective custody if he or she reasonably believes that the person should be examined to see if he or she needs to be assessed against the **assessment criteria** or the **treatment criteria**.

The **assessment criteria** are set out in section 25 of the Act. They are:

- The person has, or appears to have, a mental illness that requires or is likely to require treatment for his or her 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 the authority of the assessment order, and
- The person does not have decision-making capacity

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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.

Assessment against the assessment criteria or treatment criteria (cont.)

The **treatment criteria** are set out in section 40 of the Act. They are:

- The person has a mental illness, and
- Without treatment, the mental illness will, or is likely to, seriously harm the person's health or safety or safety of others, and
- The treatment will be appropriate and effective in terms of the treatment outcomes referred to in section 6(1) of the Act, and
- The treatment cannot be adequately given except under a Treatment Order, and
- The person does not have decision making capacity

The Mental Health Officer or police officer is only required to be satisfied that the person needs to be assessed against the criteria - not that the criteria are met.

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40. Treatment criteria

The treatment criteria in relation to a person are –

(a) the person has a mental illness; and

(b) without treatment, the mental illness will, or is likely to, seriously harm –

(i) the person's health or safety; or

(ii) the safety of other persons; and

(c) the treatment will be appropriate and effective in terms of the outcomes referred to in section 6(1); and

(d) the treatment cannot be adequately given except under a treatment order; and

(e) the person does not have decision-making capacity.

6. Meaning of Treatment

(1) For the purposes of this Act, "treatment" is the professional intervention necessary to -

(a) prevent or remedy mental illness; or

(b) manage and alleviate, where possible, the ill effects of mental illness; or

(c) reduce the risks that persons with mental illness may, on that account, pose to themselves or others; or

(d) monitor or evaluate a person's mental state.

(2) However, this professional intervention does not extend to -

(a) special psychiatric treatment; or

(b) a termination of pregnancy; or

(c) a procedure that could render a person permanently infertile; or

(d) the removal, for transplantation, of human tissue that cannot thereafter be replaced by natural processes of growth or repair; or

(e) general health care.

(3) For the purposes of this Act, “treatment” does not include seclusion, chemical restraint, mechanical restraint or physical restraint.

Protective custody policy

As far as practicable:

- A person should not be taken into protective custody if he or she can be properly examined and assessed against the assessment criteria or treatment criteria without being taken into protective custody
- A person should not be taken into protective custody by force unless either persuasion or other methods have been tried without success, or the Mental Health Officer or police officer reasonably believes that it would be futile or inappropriate to try these methods

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SCHEDULE 2 - Custody and escort provisions

PART 3 - Policy

1. Custody and escort policy

As far as practicable –

(a) patients should not be taken into protective custody if they can be properly examined and assessed against the assessment criteria or treatment criteria without being taken into protective custody; and

(b) patients should not be taken into or held in protective custody or taken or held under escort by force unless –

(i) persuasion or other non-forceful methods have been tried without success; or

(ii) the authorised custodian or escort reasonably believes that it would be futile or inappropriate to try such methods; and

(c) whenever practicable, the use of non-police custodians, escorts and assistants is to be preferred; and

(d) patients taken into protective custody or under escort should be transported with the least delay and discomfort as circumstances reasonably allow; and

(e) where a patient has been granted a leave of absence from an approved facility for a private purpose under escort, the authorised escort is not to

unreasonably interfere with the enjoyment of that leave.

Protective custody policy (cont.)

- Protective custody should occur in the least restrictive way consistent with the need to protect the person and the public, with the efficient, effective and appropriate delivery of services and with due regard for available resources
- The use of non-police Mental Health Officers and assistants is to be preferred; and police officers should be used only in situations involving violence or significant risk of violence which cannot be safely contained by non-police Mental Health Officers

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Protective custody principles

In taking a person into protective custody:

- The Mental Health Officer or police officer may enlist the assistance of any person, including another police officer
- The Mental Health Officer or police officer may use reasonable force against the person if he or she resists being taken into protective custody and/or against anyone else who tries to prevent the person from being taken into protective custody
- The Mental Health Officer or police officer may take possession of, and safeguard, any medication, prescription or other thing that is reasonably believed to be relevant to the patient's examination, assessment, treatment or care

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SCHEDULE 2 - Custody and escort provisions

PART 2 - Powers and Duties

1. General powers, &c., of custodians and escorts

To take a patient into protective custody or under escort –

(a) the custodian or escort may enlist the assistance of any person, including, if necessary, a police officer; and

(b) the custodian or escort (and any assistant) may use reasonable force against the patient if he or she resists being taken into protective custody or under escort; and

(c) the custodian or escort (and any assistant) may use reasonable force against anyone who may try to prevent the patient from being taken into protective custody or under escort; and

(d) the custodian or escort (if necessary with any assistant) may, without warrant and doing as little damage as possible, enter any premises if the custodian or escort reasonably believes that the patient may be found on those premises; and

(e) the custodian or escort (or any assistant) may take possession of and safeguard any medication, physical aid or other thing that the custodian or escort reasonably believes is or may be necessary to the patient's health, safety or welfare; and

(f) the custodian or escort (or any assistant) may take possession of and safeguard any medication, prescription or other thing that the custodian or escort reasonably believes is or may be relevant to the patient's examination, assessment, treatment or care; and
(g) the custodian or escort may, as circumstances require, transfer physical control of the patient to another custodian or escort or to another police officer, MHO or authorised person (who then has, and may exercise, any powers of the transferring custodian or escort under this clause); and
(h) the custodian or escort is not required to be in close physical proximity to the patient during any examination or assessment.

Escort to an approved assessment centre and handover

A Mental Health Officer or police officer who takes a person into protective custody must escort the person to an approved assessment centre with the least discomfort and delay as the circumstances allow.

The RHH, LGH and NWRH (Burnie Campus) are all approved assessment centres.

A person's protective custody may be handed over from one Mental Health Officer or police officer to another Mental Health Officer or police officer, at any time.

Handover in this way does not interrupt or terminate the custody.

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18. Handover of person taken into protective custody

(1) An MHO or police officer who takes a person into protective custody –

(a) must escort the person to an approved assessment centre (or ensure that another MHO or police officer does so); and

(b) may ask any MHO at the approved assessment centre to take over the protective custody of the person.

(2) An MHO who is asked to take over the protective custody of a person pursuant to subsection (1)(b) must comply with the request unless it would be unsafe in the circumstances to do so.

(3) A person's protective custody is not taken to have been interrupted or terminated merely because physical control of the person has been handed over from one MHO or police officer to another such officer.

Escort to an approved assessment centre and handover (cont.)

Once at the approved assessment centre a Mental Health Officer or police officer may ask any Mental Health Officer at the centre to take over the person's custody.

A Mental Health Officer who is asked to take over custody in this context **must comply with request**, and may only refuse to comply with the request unless it would be unsafe in the circumstances to do so.

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It may be unsafe to comply with a request to accept custody if:

- The situation involves violence or significant risk of violence which cannot safely be managed by approved assessment centre staff, or
- The person has made credible threats to harm others or has a history of violence or aggression when in similar situations

Examination

A person who is in protective custody and who has been escorted to an approved assessment centre:

- Must be given a Statement of Rights
- Must be examined by a medical practitioner, within four hours of the person's arrival at the centre, to see whether the person needs to be assessed against the assessment criteria or treatment criteria
- May be held at the centre for up to four (4) hours to allow the examination to occur

The controlling authority of the approved assessment centre is responsible for giving the person a Statement of Rights and for arranging for the person's examination by a medical practitioner.

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19. Dealing with person in protective custody

(1) This section applies if a person taken into protective custody has been escorted to an approved assessment centre pursuant to section 18.

(2) The controlling authority of the approved assessment centre must –

(a) give the person a statement of rights in a CCP approved form; and

(b) have the person examined by a medical practitioner, within 4 hours of the person's arrival at the approved assessment centre, to see if the person needs to be assessed against the assessment criteria or the treatment criteria.

Release

A Mental Health Officer or police officer who has a person in protective custody must release the person if:

- Informed consent is given to assess or treat the person
- An Assessment Order or Treatment Order is made for the person
- The Mental Health Officer or police officer reasonably forms the belief that the person no longer meets the criteria for being taken into protective custody
- The person has been at the approved assessment centre for four (4) hours and none of these things has occurred

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20. Release of person from protective custody

(1) An MHO or police officer who has a person in protective custody must release the person from the protective custody if –

(a) before or during the authorised detention period –

(i) informed consent is given to assess or treat the person; or

(ii) an assessment order or treatment order is made in respect of the person; or

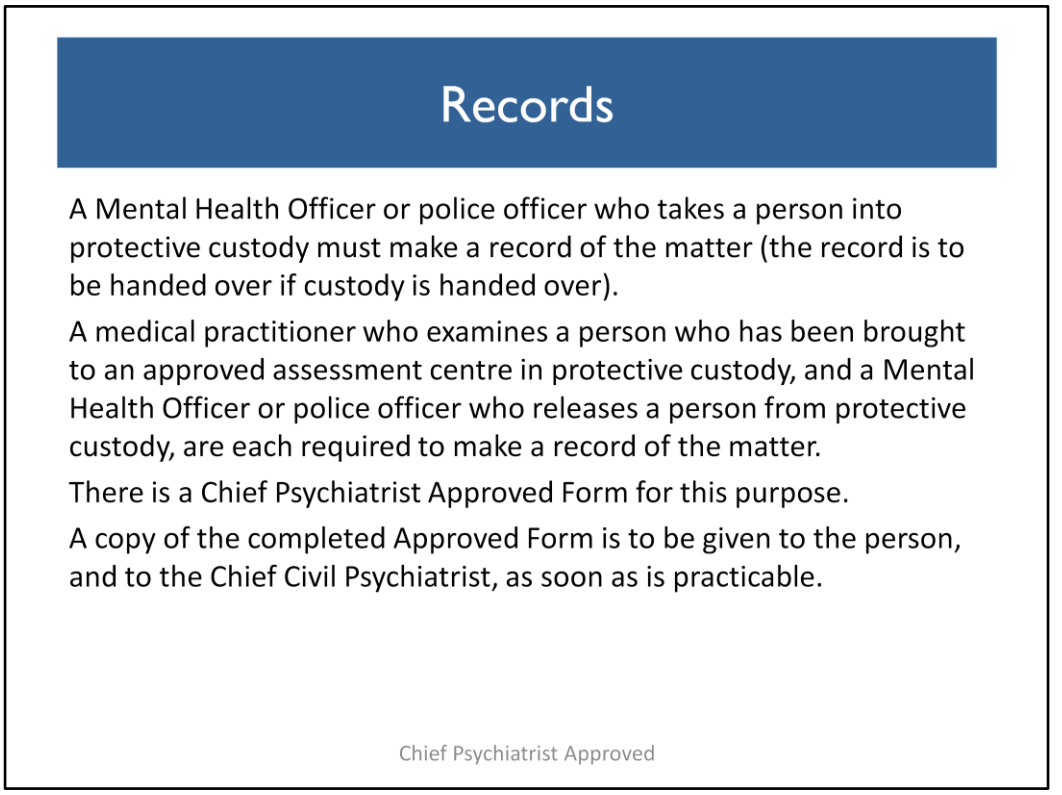
(iii) the MHO or police officer reasonably forms the belief that the person no longer meets the criteria for being taken into protective custody, as specified in section 17(1); or

(b) the authorised detention period expires and none of the things referred to in paragraph (a) has occurred.

Note The assessment criteria and the treatment criteria are set out in section 25 and section 40 respectively.

(2) In this section –

authorised detention period means a period, not exceeding 4 hours, calculated from the precise time of the person's arrival at the approved assessment centre.



The medical practitioner is additionally required to ensure that a copy of the record of examination is placed on the person's clinical record, ensuring that a clinical record is created for this purpose if necessary.

21. Records, &c.

(1) An MHO or police officer who takes a person into protective custody is to make an appropriate record of the matter in a CCP approved form.

(2) An MHO or police officer, on transferring the protective custody of a person to another such officer, is to hand the record made under subsection (1) (or a copy thereof) to the other officer.

(3) An MHO or police officer who releases a person from protective custody is to –
(a) make an appropriate record of the matter in a CCP approved form; and
(b) give the person a copy of the record, together with the record made under subsection (1) (or a copy thereof); and
(c) give the CCP a copy of the record, together with the record made under subsection (1), after the end of the month in which it is made.

(4) A medical practitioner who examines a person in protective custody is to –
(a) make an appropriate record of the matter in a CCP approved form; and
(b) place a copy of the record on the person's clinical record (ensuring that

such a clinical record is created if one does not already exist); and
(c) give the CCP a copy of the record at the end of the month in which it is made.

Transport and escort generally

Police officers and Mental Health Officers may also have a role in escorting and transporting patients who are being assessed and treated under the Act, in the following circumstances:

- To ensure that a patient who is subject to an Assessment Order presents for assessment under the Order
- To ensure that a patient who is subject to a Treatment Order presents for treatment under the Order
- To return absconding involuntary patients and forensic patients, and patients who have failed to comply with leave or whose leave is cancelled or has expired, to an approved facility
- To escort an involuntary patient who has failed to comply with a Treatment Order or who requires admission to prevent possible harm, to an approved hospital
- To transfer patients to and from, and between, relevant facilities

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As with Protective custody, decisions about who should invoke and continue transport and escort in these situations (a police officer, an ambulance officer or another Mental Health Officer) are to be made in accordance with the **Memorandum of Understanding for the Delivery of Services to People with Mental Illness**.

Search and seizure

A police officer or Mental Health Officer may conduct a frisk search or ordinary search of a person who is in protective custody or who is being escorted or transported under the Act, if the Mental Health Officer or police officer reasonably suspects that the person may be carrying anything that could be a danger to the person or others, or that could assist the person to escape.

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Schedule 2 – Custody and Escort Provisions

Part 1 – Preliminary

1. Interpretation

In this Schedule –

custodian or *escort*, of a patient, means a police officer, MHO or authorised person who, by or under this Act, is empowered or authorised to take the patient into protective custody or under escort;

frisk search, of a patient, means a search conducted speedily by any or any combination of the following means:

(a) running the hands over the patient's outer clothing;
(b) passing a metal detection device over or in close proximity to the patient's outer clothing;
(c) examining anything worn or carried by the patient that he or she appears to have removed or discarded voluntarily;
(d) passing a metal detection device over or in close proximity to anything worn or carried by the patient that he or she appears to have removed or discarded voluntarily;

ordinary search, of a patient, means a search limited to –

(a) requiring, in the searcher's discretion, the patient to remove one or more of the following:

(i) any coat, jacket or like outer garment;

(ii) any hat;

(iii) any shoes, boots or like footwear;

(iv) any socks;

(v) any gloves or mittens;

(vi) any handbag, backpack or like carrying item; and

(b) requiring, in the searcher's discretion, the patient to empty all or any of his or her pockets; and

(c) examining the item or items so removed and the contents thereof and, if applicable, the contents of the pockets so emptied;

patient includes a prospective patient;

take, a patient into protective custody or under escort, includes holding the patient in protective custody or under escort.

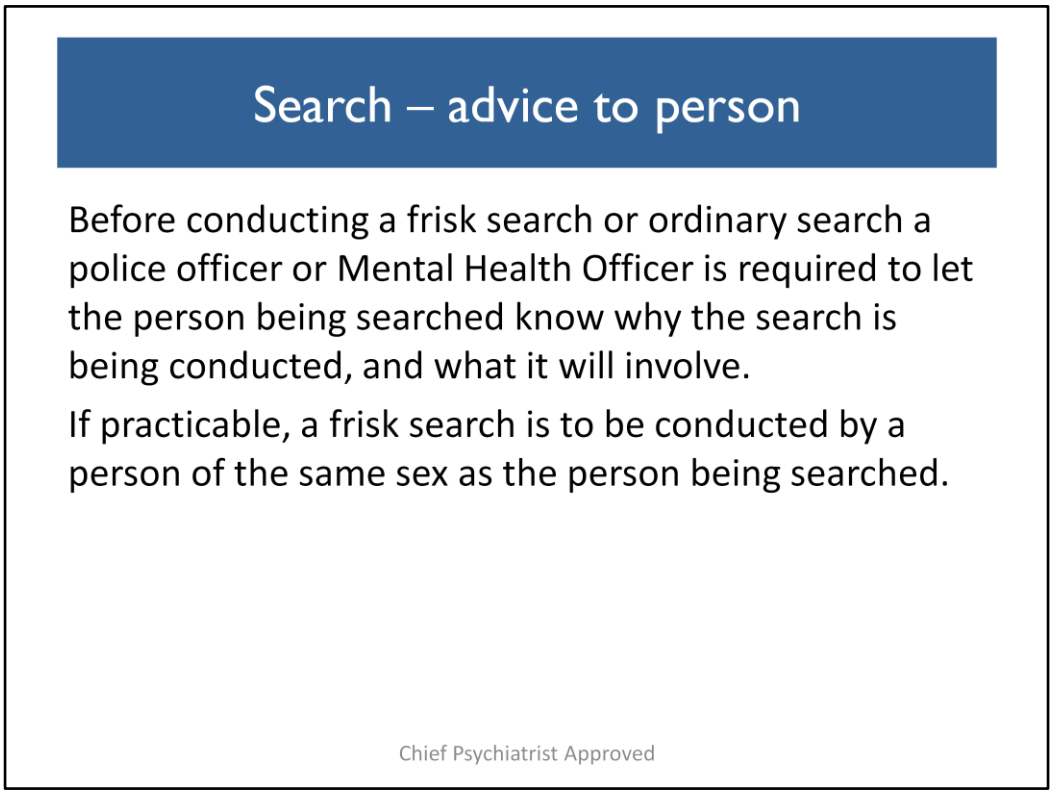
2. Search power of custodians and escorts

(1) To take a patient into protective custody or under escort –

(a) the custodian or escort may conduct a frisk search or ordinary search of the patient if the custodian or escort reasonably suspects that the patient may be carrying anything that could –

(i) be a danger to the patient or another person; or

(ii) assist the patient to escape; and



Schedule 2 – Custody and Escort Provisions

Part 1 – Preliminary

2. Search power of custodians and escorts

(2) Before conducting a frisk search or ordinary search pursuant to subclause (1), the custodian or escort is to inform the patient –

(a) why the search is to be conducted; and

(b) what the search will involve.

(3) A frisk search is, if practicable, to be conducted by a person of the same sex as the person being searched.

Seizure

A police officer or Mental Health Officer may seize anything found in a frisk search or ordinary search if the officer reasonably believes that the thing could be a danger to the person or others, or could assist the person to escape.

A police officer or Mental Health Officer may retain anything seized and either:

- Safeguard the thing so that it can either be returned to the person at a later point in time, or given to a health professional or other person in connection with the person's examination, assessment, treatment or care, or
- Dispose of the thing as the officer thinks fit including by destroying the thing if the thing is unlawful or dangerous and is not required for evidentiary purposes – with relevant advice or direction to be obtained if needed

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Schedule 2 – Custody and Escort Provisions

Part 1 – Preliminary

1. Interpretation

In this Schedule –

relevant advice or direction, includes advice or direction from –

(a) the Commissioner of Police or another commissioned police officer within the meaning of the *Police Service Act 2003*; or
(b) a Chief Psychiatrist; or
(c) a medical practitioner; or
(d) the Director of Ambulance Services under the *Ambulance Service Act 1982*;

2. Search power of custodians and escorts

(1) To take a patient into protective custody or under escort –

(b) the custodian or escort may seize anything found in the frisk search or ordinary search if he or she reasonably believes it is a thing of the kind referred to in paragraph (a)(i) and (ii); and

(c) the custodian or escort may retain anything seized in the frisk search or ordinary search and, as the circumstances may require or indicate –

(i) safeguard the thing for later return to the patient or transfer to a health professional or other person in connection with the patient's examination, assessment, treatment or care; or

(ii) dispose of thing as the custodian or escort thinks fit (after, if he or she adjudges it necessary or expedient to do so, obtaining any relevant advice or direction) including, if the thing is unlawful or dangerous and not required for evidentiary purposes, disposal by means of its destruction.

Frisk search

frisk search, of a patient, means a search conducted speedily by any or any combination of the following means:

(a) running the hands over the patient's outer clothing;
(b) passing a metal detection device over or in close proximity to the patient's outer clothing;
(c) examining anything worn or carried by the patient that he or she appears to have removed or discarded voluntarily;
(d) passing a metal detection device over or in close proximity to anything worn or carried by the patient that he or she appears to have removed or discarded voluntarily

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Ordinary search

ordinary search, of a patient, means a search limited to –

(a) requiring, in the searcher's discretion, the patient to remove one or more of the following:

(i) any coat, jacket or like outer garment;

(ii) any hat;

(iii) any shoes, boots or like footwear;

(iv) any socks;

(v) any gloves or mittens;

(vi) any handbag, backpack or like carrying item; and

(b) requiring, in the searcher's discretion, the patient to empty all or any of his or her pockets; and

(c) examining the item or items so removed and the contents thereof and, if applicable, the contents of the pockets so emptied

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Proof of identity

If asked to do so, a Mental Health Officer or police officer is required to produce proof of identity.

A police officer or ambulance officer in uniform may comply with this requirement by stating that he or she is acting as a custodian or escort under the Act.

A police officer who is not in uniform may produce his or her warrant card.

An ambulance officer who is not in uniform may produce his or her ambulance identification card.

A Mental Health Officer may produce his or her Mental Health Officer identification card.

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SCHEDULE 2 - Custody and escort provisions

PART 2 - Powers and Duties

3. Proof of identity

(1) This clause applies if a person is purporting to exercise, discharge or perform a responsibility as a custodian or escort.

(2) Any affected party may ask the person to produce proof of identity.

(3) Subject to subclause (4), it is the person's duty to comply with the request.

(4) For the purposes of subclause (3), it is sufficient if the person –

(a) in the case of an MHO, produces his or her MHO identity card; or

(b) in the case of an authorised person, produces his or her identity card, if issued, or instrument of authorisation; or

(c) in the case of a police officer or ambulance officer who is not in uniform, produces his or her MHO identity card, if issued, or –

(i) in the case of a police officer, his or her warrant card; or

(ii) in the case of an ambulance officer, his or her ambulance officer identification card; or

(d) in the case of a police officer or ambulance officer who is in uniform,

states that he or she is acting as authorised custodian or escort under this Act.

(5) A failure to comply with subclause (3) does not, of itself, invalidate the subsequent exercise, discharge or performance of the relevant responsibility.

(6) The CFP or controlling authority of an SMHU may issue an authorised person with an identity card for use in connection with escort duties.

(7) In this clause –

affected party means any of the following:

(a) the patient;

(b) a representative or support person of the patient;

(c) the owner or occupier of any premises that the person purporting to act as custodian or escort is, in that capacity, seeking to enter;

(d) the controlling authority of an approved facility from which the person purporting to act as custodian or escort is, in that capacity, seeking to remove the patient;

(e) a Chief Psychiatrist.

Sedation

An ambulance officer or medical practitioner who is approved as a Mental Health Officer under the Act may sedate a patient who is being transported by ambulance if the officer or practitioner reasonably considers it necessary or prudent to do so, having regard to and in accordance with field protocols approved by the Director of the Ambulance Service under the *Poisons Act 1971*.

A report of the matter must be provided to the Chief Civil Psychiatrist.

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212. Special powers of ambulance officer acting as MHO

(1) An approved ambulance officer or an approved medical officer, when acting as an MHO in transporting any patient by ambulance under this Act, may sedate the patient if the approved ambulance officer or approved medical officer reasonably considers it necessary or prudent to do so, having regard to, and in accordance with, any field protocols approved under the *Poisons Act 1971* by the Commissioner, within the meaning of the *Ambulance Service Act 1982*.

(2) Nothing in this section is to be taken as authorising an approved ambulance officer or approved medical officer to sedate a patient contrary to the *Poisons Act 1971*or another law of the State.

(3) An approved ambulance officer or approved medical officer who exercises the power of sedation under subsection (1) is to give the CCP a report of the matter.

(4) The report is to –

(a) be in a CCP approved form; and

(b) be given within 14 days after the end of the month in which the power of sedation is exercised; and

(c) set out full particulars of the matter, including –

(i) the name of the patient; and

(ii) the reason for the transportation; and

(iii) particulars of the sedation, the reasons for it, and the outcome.

(5) In this section –

approved ambulance officer means an ambulance officer who is approved as an MHO for this Act;

approved medical practitioner means a medical practitioner who is approved as an MHO for this Act;

patient includes a prospective patient;

transport includes –

(a) helping to transport; and

(b) making preparations to transport.

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 at 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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