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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

The Act should be interpreted and utilised in accordance with its objects. The 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

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 be accountable

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.

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.

When can protective custody be invoked?

A Mental Health Officer or police officer may take a person into protective custody if the Mental Health Officer or police officer reasonably believes that:

- The person has a mental illness, and
- The person should be examined to see if he or she needs to be assessed against the assessment criteria or the treatment criteria, and
- The person's safety or the safety of others is likely to be at risk if the person is not taken into protective custody

When taking a person into protective custody:

- A Mental Health Officer or police officer may enter premises where the person is reasonably believed to be, without a warrant
- There is no requirement to confirm whether the person is on an Assessment or Treatment Order or to check whether any other process (under the *Mental Health Act 2013* or another Act) is underway

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.

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

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.

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

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

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

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.

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.

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.

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

Records

A Mental Health Officer or police officer who takes a person into protective custody must make a record of the matter (the record is to be handed over if custody is handed over).

A medical practitioner who examines a person who has been brought to an approved assessment centre in protective custody, and a Mental Health Officer or police officer who releases a person from protective custody, are each required to make a record of the matter.

There is a Chief Psychiatrist Approved Form for this purpose.

A copy of the completed Approved Form is to be given to the person, and to the Chief Civil Psychiatrist, as soon as is practicable.

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

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.

Search – advice to person

Before conducting a frisk search or ordinary search a police officer or Mental Health Officer is required to let the person being searched know why the search is being conducted, and what it will involve.

If practicable, a frisk search is 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

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

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

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.

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.

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

Questions

Any questions?