AN INTRODUCTION TO MENTAL HEALTH ACT 2009

INTRODUCTION

The Mental Health Act 2009 (the Act) provides for the treatment and protection of people who have serious mental illness. The Act promotes the right of people who have mental illness to receive timely and comprehensive services which maximise their recovery. It also promotes the involvement of individuals in their treatment and care, and limits the circumstances in which orders for involuntary treatment can be made. There are two kinds of involuntary orders: community treatment orders and inpatient treatment orders.

The Act contains guiding principles for those with responsibilities to provide mental health services including the Minister, the Chief Psychiatrist and health professionals who provide mental health services.

WHAT IS MENTAL ILLNESS?

Mental illness is defined in the Act as 'any illness or disorder of the mind'. This is a broad definition, and does not require a specified diagnosis. Schedule 1 of the Act indicates that mental illness cannot be presumed based on a person's conduct:

A person does not have a mental illness merely because of any 1 or more of the following:

- (a) the person expresses or refuses or fails to express, or has expressed or refused or failed to express, a particular political opinion or belief;
- (b) the person expresses or refuses or fails to express, or has expressed or refused or failed to express, a particular religious opinion or belief;
- (c) the person expresses or refuses or fails to express, or has expressed or refused or failed to express, a particular philosophy;
- (d) the person expresses or refuses or fails to express, or has expressed or refused or failed to express, a particular sexual preference or sexual orientation;
- (e) the person engages in or refuses or fails to engage in, or has engaged in or refused or failed to engage in, a particular political activity;
- (f) the person engages in or refuses or fails to engage in, or has engaged in or refused or failed to engage in, a particular religious activity;
- (g) the person engages in or has engaged in a particular sexual activity or sexual promiscuity;
- (h) the person engages in or has engaged in immoral conduct;
- (i) the person engages in or has engaged in illegal conduct;
- (j) the person has developmental disability of mind;
- (k) the person takes or has taken alcohol or any other drug;
- (I) the person engages in or has engaged in anti-social behaviour;
- (m) the person has a particular economic or social status or is a member of a particular cultural or racial group.

However, nothing prevents, in relation to a person who takes or has taken alcohol or any other drug, the serious or permanent physiological, biochemical or psychological effects of drug taking from being regarded as an indication that a person is suffering from mental illness.

Office of the Public Advocate

The Public Advocate is an independent statutory officer accountable to the South Australian Parliament

> PO Box 213 PROSPECT SA 5082

Tel (08) 8342 8200 Toll Free 1800 066 969 Fax (08) 8342 8250

Email opa@agd.sa.gov.au Web www.opa.sa.gov.au



WHO DECIDES ON TREATMENT?

Some people will receive assistance for mild or moderate mental illness from a medical practitioner. A psychiatrist or an authorised medical practitioner* will examine a person to determine whether they have a serious mental illness and will decide what treatment is needed. *Authorised medical practitioner means medical practitioners recognised to have advanced mental health training.

HOW IS A MENTAL ILLNESS TREATED?

Treatment may include medication, talking with health professionals and undertaking activities which help with recovery. A treatment and care plan should be prepared for each patient by the mental health practitioners providing treatment. The plan describes the services which will be provided. The patient and key family members or friends should be involved in preparing and revising the plan.

CAN A PERSON BE TREATED AGAINST THEIR WILL?

Involuntary treatment can only occur when an authorised medical practitioner or psychiatrist concludes that: -

- (a) the person has a mental illness; and
- (b) because of the mental illness, the person requires treatment for the person's own protection from harm (including harm involved in the continuation or deterioration of the person's condition) or for the protection of others from harm; and

in the case of community treatment orders

- (c) there are facilities and services available for appropriate treatment of the illness; and
- (d) there is no less restrictive means than a community treatment order of ensuring appropriate treatment of the person's illness.

in the case of inpatient treatment orders

(c) there is no less restrictive means than an inpatient treatment order of ensuring appropriate treatment of the person's illness

The authorised medical practitioner or psychiatrist must also consider, amongst other things, "the prospects of the person receiving all treatment of the illness necessary for the protection of the person and others on a **voluntary** basis or (in considering inpatient treatment orders) on a community treatment order".

DO GUARDIANS DO MORE THAN MAKE DECISIONS?

A guardian may advocate for access to services or promote coordination of services. The guardian may also encourage effective communication and conflict resolution between all interested parties involved with a protected person if it is relevant to the protected person's wellbeing.

OTHER LANGUAGES

Interpreter: If you need an interpreter please let the guardian know.

OPA OFFICE ACCESS

Access: Parking for disabled persons in front of building, lifts to the 7th floor, accessible toilet on that floor and equipment to assist the hearing impaired.

¹ **Protected Person:** the person under guardianship order

WHAT IS AN ORDER FOR INPATIENT TREATMENT?

An inpatient treatment order authorises keeping and treating a person in a treatment centre - a hospital which is approved for providing mental health treatment. A person under an inpatient treatment order is required to stay in the treatment centre and receive psychiatric treatment, even if they don't want to. The person can also be required to receive treatment for any other illness whether or not they agree to that treatment. There are three levels of inpatient treatment orders:

Level 1: maximum 7 days

This order can be made by a medical practitioner or an authorised health professional (nurse, social worker, psychologist or occupational therapist with special mental health training who has been recognised as having special mental health training).

Level 2: maximum 42 days

This order can be made by a psychiatrist or authorised medical practitioner before the expiry of a level 1 order.

Level 3: maximum 12 months (6 months for a child)

This order can only be made by the South Australian Civil and Administrative Tribunal (the Tribunal) for a person on a current level 2 or level 3 order.

Level 1 and 2 orders can be revoked by a psychiatrist or authorised medical practitioner at any time during the period of the order. An application can be made to the Tribunal for variation or revocation of an order. For more information see Information Sheet 12: Inpatient Treatment Orders

WHAT IS A COMMUNITY TREATMENT ORDER?

A community treatment order requires a person with a mental illness, who is not being kept in hospital, to have treatment, including taking prescribed medication for that mental illness even if they do not want to. Only a psychiatrist or authorised medical practitioner can decide what treatment is necessary. A community treatment order cannot be used to enforce treatment of other illnesses. There are two levels of community treatment orders:

Level 1: maximum 28 days

This order can be made by medical practitioner(including a psychiatrist) or by an authorised health professional.

Level 2: maximum 12 months (6 months for a child)

This order is made and reviewed by the Tribunal. (A level 1 order is not a prerequisite for making a level 2 order.)

For more information see Information Sheet 13 Community treatment Orders

WHAT IS THE ROLE OF THE TRIBUNAL UNDER THE MENTAL HEALTH ACT?

The Tribunal is a court like body which has authority under the Act to make and review inpatient treatment orders and community treatment orders. It also reviews mental health orders made by mental health professionals. The Tribunal has other monitoring and decision making responsibilities regarding prescribed psychiatric treatment and the interstate transfer of involuntary patients. See Information Sheet 16 Prescribed Psychiatric Treatment

WHAT IF A PERSON DISAGREES WITH AN ORDER?

A person who disagrees with a level 1 community treatment order or level 1 or 2 inpatient treatment order made by a mental health practitioner can apply to the Tribunal for review of the order.

A person who disagrees with a Tribunal decision or order can apply to the Tribunal for an internal review of the decision. An internal review is undertaken by senior members of the Tribunal who

were not involved in the original decision. It is a fresh look at the decision, using the information provided when the order was made and any other relevant information accepted by the Tribunal.

A <u>legal representation scheme</u> provides legal representation free of charge to all persons who are under an order about which there has been an application for review by the Tribunal. Other parties will need to make their own arrangements for legal representation.

WHAT OTHER RIGHTS DO PEOPLE WITH MENTAL ILLNESS HAVE?

As well as the general intentions of the Act and review rights outlined above, the following important rights are protected by the Act:-

- mental health professionals must inform individuals of their rights, provide copies of any involuntary orders and variations to those orders and assist people to understand these, including ensuring access to interpreters.
- participation in one's own treatment and care planning
- privacy of personal information: restrictions on when and with whom this can be shared, and for what purpose. Note that voluntary patients retain the right to decide what involvement carers, relatives or friends have in their treatment and care.
- right to ask for support of another person in interviews with mental health professionals.
 (This could be a guardian, medical agent, carer, relative, friend, or a representative of the Public Advocate or another advocate.)

WHAT INVOLVEMENT CAN CARERS, RELATIVES AND FRIENDS HAVE?

The Act recognises the importance of carers, relatives and friends as participants in the treatment, care and recovery of individuals with mental health problems. The Act-

- allows for personal information to be shared between mental health professionals and carers provided that this is in the best interests of the person under their care. If the person is under an order, information that is reasonably required for the care, treatment or rehabilitation of the person can be shared without consent.
- sets an expectation that a guardian, medical agent, carer, relative or friend will be involved in treatment and care planning when a person is under an involuntary order.
- requires that one of the above people:
 - o receives a copy of all involuntary treatment orders made, varied or revoked
 - o receives a copy of the statement of the patient's rights; unless such a person cannot be located or it is not in the best interests of the person with the mental illness.
- allows these parties to lodge applications for community treatment orders, review of orders and appeal against decisions.
- acknowledges the right to seek contact with a community visitor.

WHO CAN TRANSPORT A PERSON FOR ASSESSMENT OR TREATMENT?

The following categories of people have particular authority under the Act to transport persons who are believed to have a mental illness or are the subject of certain orders.

- mental health clinician,
- ambulance officer,
- medical officer or a flight nurse from the Royal Flying Doctor Service
- member of the police force.

WHAT IS PRESCRIBED PSYCHIATRIC TREATMENT?

Prescribed treatment is a category of treatment that has been identified as requiring special consideration before being undertaken. The Act currently defines electro- convulsive therapy and

some neurosurgery as prescribed psychiatric treatment. Special consent provisions apply for these procedures. See Information Sheet 16: Prescribed Psychiatric Treatment

WHAT ARE COMMUNITY VISITORS?

A Principal Community Visitor is appointed under the Act to manage a scheme for people to regularly visit and inspect treatment centres and meet individuals who are receiving treatment. Patients and their families can ask to speak with a community visitor. The Community Visitors Scheme can be contacted on phone 08 8226 0315. More information is available from the website: https://www.sa.gov.au/topics/citizens-and-your-rights/feedback-and-complaints/community-visitor-scheme