



# INPATIENT TREATMENT ORDERS

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*Mental Health Act 2009*

## WHAT IS AN INPATIENT TREATMENT ORDER?

An inpatient treatment order (ITO), made under the *Mental Health Act 2009* ('the Act'), authorises keeping a person in a treatment centre to receive psychiatric treatment. A person who is subject to an inpatient treatment order is required to stay at the treatment centre (usually a hospital) and to receive treatment for a mental illness, even if they don't want to stay, or to have treatment.

## WHEN CAN AN INPATIENT TREATMENT ORDER BE MADE?

An ITO can be made in relation to a person when:-

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

"No less restrictive means of treatment" means that *consideration must be given, amongst other things, to 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 on a community treatment order* (section 29(2) of the Act).

## HOW DOES THE INPATIENT TREATMENT PROCESS WORK?

There are three levels of inpatient treatment orders:

### Level 1: maximum 7 days

A level 1 order can be made initially by a medical practitioner\* or an authorised health professional (a nurse, social worker, psychologist or occupational therapist recognised as having special mental health training). \*Medical practitioner includes psychiatrists and authorised medical practitioners (medical practitioners recognised to have advanced mental health training).

The level 1 order must be reviewed within 24 hours by a psychiatrist or authorised medical practitioner (not being the person who made the initial order). A psychiatrist or authorised medical practitioner can confirm or revoke the order at that review, or at any time during the level 1 period. If the review cannot be done in the first 24 hours, then it must occur as soon as possible.

### Level 2: maximum 42 days

A level 2 order can be made by a psychiatrist or authorised medical practitioner before the expiry of a level 1 order. It can be varied or revoked by a psychiatrist or authorised medical practitioner at any time during the order.

### Level 3: maximum 12 months for an adult and 6 months for a child

A level 3 order can only be made by the South Australian Civil and Administrative Tribunal (the Tribunal). An application for an order can be made by the director of an approved treatment centre (or their approved nominee), or the Public Advocate.

The Tribunal must review orders for children within three (3) months of the order being made. The Tribunal can, on application, vary (change) or revoke (cancel) an order at any time it is in force.

## Office of the Public Advocate

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

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### WHAT RIGHTS DOES THE PERSON UNDER THE ORDER HAVE?

A person subject to an inpatient treatment order must be given a statement of their legal rights and a copy of the order (and subsequent variations or revocations of the order). Assistance must be provided for those who have difficulty understanding any of the information provided including, where appropriate, interpreter assistance. When a psychiatrist or an authorised medical practitioner makes, revokes or varies an order, a guardian, medical agent, relative, carer or friend of that person must also receive this information – unless their whereabouts cannot be located or it is considered not to be in the person's best interests to release this information.

Treatment and Care Plans must be developed to govern treatment of a person subject to a level 2 or level 3 orders. This must be done in collaboration with the person and their support person(s). A person who is subject to an inpatient treatment order may request the involvement of a guardian, medical agent, relative, carer or friend or advocate in significant meetings with treating staff.

Community Visitors may provide information and advocacy for the person. The patient, their guardian, substitute decision maker, relative, friend or carer can request involvement of a community visitor who has authority to inspect the treatment centre, provide information, and/or advocate for the patient in relation to their treatment and care. Contact the Community Visitors Scheme on 1800 606 302 or find out more at:

<https://www.sa.gov.au/topics/citizens-and-your-rights/feedback-and-complaints/community-visitor-scheme>.

### WHAT IS THE EFFECT OF AN INPATIENT TREATMENT ORDER?

If a person is under an ITO they are required to stay in a treatment centre and have treatment for a mental illness - whether or not they agree to this. The person may also be required to have treatment for any other illness, whether or not they agree to it. They may only leave the treatment centre under the care and control of staff, or if they are granted leave of absence.

Additionally, they can be transferred to a different treatment centre.

The following categories of people have authority 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;
- a member of the police force.

### CAN AN INPATIENT TREATMENT ORDER BE REVIEWED AT ANY TIME?

Yes. An application for review of an ITO can be made to the Tribunal at any time during the order, and the Tribunal must revoke the order if it is not satisfied there are proper grounds for it to continue. Review of a level 1 or level 2 ITO made by a mental health professional will be undertaken by the Tribunal's 'original' jurisdiction. An application for review can be made by the person subject to the order, their guardian, friend, relative or medical agent, the Public Advocate, or any other person the Tribunal considers has a proper interest.

Review of a level 3 ITO made by the Tribunal is undertaken by senior members of the Tribunal who were not involved in the original decision. The review 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. Application for review of a level 3 ITO can be made by the person who applied for the ITO, the person subject to the ITO, any person who gave evidence to the Tribunal when it made the order, the Public Advocate or anyone who the Tribunal considers has a proper interest.

**A legal representation scheme** is provided free of charge to the person who is subject to the ITO being reviewed. The person is entitled to be represented by a lawyer and can be provided with a lawyer or arrange their own representation. Other parties to a review will need to make their own arrangements and payment for legal representation