

MH ACT (2007) GUIDE BOOK



The NSW Institute of Psychiatry

MENTAL HEALTH ACT (2007) GUIDE BOOK

NSW HEALTH

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Foreword

The NSW Institute of Psychiatry is pleased to be involved in the production of the revised Mental Health Act Guide Book that was prepared with financial support from the Department of Health.

The Guide represents the coordinated activity and enthusiasm of many people, but particularly representation from the Mental Health and Drug & Alcohol Office at the NSW Department of Health, the Mental Health Association, the Mental Health Review Tribunal and the Institute.

The Institute of Psychiatry is committed to the production of high quality effective educational material in the field of mental health and sees this revised *Guide* as a significant achievement.

A handwritten signature in black ink that reads "Ros Montague". The signature is written in a cursive, flowing style.

Dr Ros Montague

Director

NSW Institute of Psychiatry

Introduction

The Mental Health Act 2007 establishes the legislative framework within which care, control and treatment can be provided for persons with a mental illness in NSW. A good understanding of the major objectives and requirements of the Act is therefore important for all of those who work within the mental health system.

The Act, which came into operation in November 2007, retained many of the central principles of the previous legislation such as the definitions of mental illness, a mentally ill person, and a mentally disordered person. However, a number of significant provisions were introduced, including a Statement of Rights, the ability to make a Community Treatment Order for a person living in the community without the need for inpatient admission, and the recognition of primary carers.

The Guide has been written primarily to provide mental health practitioners who work with the Act on a regular basis with a clear and practical source of information about the procedures required and issues to be considered in preparing for hearings before the Mental Health Review Tribunal. However, it is also hoped that it will be useful to those who are involved with providing support and advice to consumers and carers.

On behalf of the NSW Institute of Psychiatry and the Mental Health Association NSW I wish to thank Mr Dennis Bale, Mr Peter Bazzana, Ms Maria Bisogni, Mr John Feneley, Mr Ian Ellis-Jones and Dr Nick O'Connor for their valuable comments and suggestions, and Ms TL Tran-Tremble for assistance with the production of this guidebook.

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Section 1

Aims and Objectives of the Mental Health Act

The Mental Health Act 2007 contains a range of aims and objectives that underline the central place of community based care, the importance of involving consumers in decisions about their care and treatment wherever possible, and acknowledge the important role played by carers. While these principles do not create any legally enforceable rights or entitlements, they are intended to provide guidance in the daily administration of the Act (s195).

1.1 Objects (s3)

The objects of the Act are to:

- provide for the care, treatment and control of a consumer who is mentally ill or disordered
- facilitate that care, treatment and control through community facilities
- facilitate the provision of hospital care on a voluntary basis where appropriate, and on an involuntary basis in a limited number of situations
- protect the civil rights of a consumer who is mentally ill or mentally disordered while providing them with access to appropriate care
- facilitate the involvement of a consumer who is mentally ill or mentally disordered, and their carer, in decisions about their care, treatment and control.

1.2 Principles of care and treatment (s68)

The Act sets out a list of key principles for the care and treatment of consumers with a mental illness or mental disorder. These can be summarised as follows:

- consumers should receive the best possible care and treatment in the least restrictive environment enabling the care and treatment to be effectively given
- care and treatment should be in line with professionally accepted standards
- care and treatment should be designed to assist consumers, wherever possible, to live, work and participate in the community

- medication should be given for therapeutic or diagnostic needs and not as a punishment or for the convenience of others
- consumers should be given information about their treatment that includes the effects of treatment and any alternatives
- any restriction of liberty and interference with the rights, dignity and self-respect of a consumer is to be kept to the minimum necessary in the circumstances
- each consumer's particular needs should be recognised including those related to age, gender, religion, culture and language
- consumers should be involved in the development of plans for their care and treatment where practicable
- consumers should be informed of their rights and entitlements under the Act, in a language and manner that they are most likely to understand
- the role of carers should be acknowledged and their rights to be kept informed should be given effect.

1.3 Objectives of the public health system (s105)

The objectives of the public health system in relation to the provision of mental health services are also set out in the Act. These specify that the public health system is to establish, develop, promote, assist and encourage mental health services that:

- ensure that provision is made for the care, treatment, control and rehabilitation of consumers who are mentally ill or mentally disordered, and
- enable treatment to be provided in the community (rather than hospital) wherever possible, and
- develop standards and conditions of care that are at least as beneficial as those provided for people with other illnesses, and
- take the religious, cultural and language needs of consumers into account, and
- are comprehensive and accessible, and
- enable appropriate intervention at an early stage of mental illness, and
- assist consumers with a mental illness to live in the community by providing direct support and liaison with carers and other community services.

Section 2

Definitions

There are 2 key definitions that anyone working with the Mental Health Act should understand:

- a mentally ill person
- a mentally disordered person.

These definitions provide the framework for many of the decisions made by mental health professionals. In particular, it is these definitions that determine who can be involuntarily admitted to a declared mental health facility, and who can be required to comply with a community treatment order.

2.1 Who is a mentally ill person under the Act?

Definition (s14)

A mentally ill person is someone who is suffering from a mental illness and owing to that illness there are reasonable grounds for believing that care, treatment or control of the person is necessary:

- for the person's own protection from serious harm, or
- for the protection of others from serious harm.

In considering whether someone is a mentally ill person, their continuing condition, including any likely deterioration in their condition and the likely effects of any such deterioration, are to be taken into account.

What is a mental illness for the purposes of the Act? (s4)

Mental illness for the purposes of the Act means a condition that seriously impairs, either temporarily or permanently, the mental functioning of a person and is characterised by the presence of any one or more of the following symptoms:

- delusions

- hallucinations
- serious disorder of thought form
- severe disturbance of mood
- sustained or repeated irrational behaviour indicating the presence of one or more of the symptoms mentioned above.

The symptoms included in this definition should be given their ordinary accepted meanings in the psychological sciences, without reference to overly clinical complexities or distinctions. For example a 'delusion' may be considered to be a false, fixed and irrational belief held in the face of evidence normally sufficient to negate that belief, and a 'hallucination' is considered to be a subjective sensory experience for which there is no apparent external source or stimulus.

The main characteristic of 'serious disorder of thought form' is a loss of coherence: one idea does not follow or link logically to the next. A 'severe disturbance of mood' refers to a sustained and profound change in mood that substantially impairs a person's level of functioning.

The term 'irrational behaviour' refers to behaviour which a member of the community to which the person belongs would consider concerning and not understandable. In deciding whether a person is 'mentally ill' the term 'irrational behaviour' includes the additional test that it can be inferred from the behaviour that the person is suffering from delusions, hallucinations, serious disorder of thought, or severe mood disturbance. In determining whether a person is 'mentally ill' the irrational behaviour must be sustained or repeated.

What is serious harm?

Serious harm is a broad term that can best be understood in terms of its everyday usage. It can include:

- physical harm
- harm to reputation and relationships
- financial harm
- self-neglect
- neglect of others, e.g. the person's children.

What is a continuing or deteriorating condition? (s14(2))

These phrases require an authorised medical officer to not only consider a consumer's symptoms at the time of an assessment, but also:

- the consumer's clinical history including their degree of insight and their capacity or willingness to follow a voluntary treatment plan
- the likely impact on the consumer's prospects for improvement or recovery if there is a failure to comply with a treatment plan
- the possible serious harm that may occur if the consumer is not able to be engaged in assessment and treatment.

! Continuing condition

"The phrase 'continuing condition' invites the clinician and the decision maker to use an involuntary treatment order to assist a person in avoiding the 'revolving door syndrome'. This can be done by ensuring that the person is admitted when necessary, and receives involuntary treatment for long enough to lessen the risk of an early serious relapse." (Mental Health Review Tribunal)

Is there a less restrictive environment for the safe and effective provision of care and treatment? (s12(1))

A person must not be involuntarily admitted to, or detained in a mental health facility unless an authorised medical officer is of the opinion that:

- the person is a mentally ill (or mentally disordered) person, and
- no other care of a less restrictive kind, that is consistent with safe and effective care, is appropriate and reasonably available.

Thus, even where an assessment leads to the view that a person is mentally ill, involuntary admission may not be necessary or appropriate. The authorised medical officer also needs to assess the person's social resources and consider any realistic options, e.g. "What can be expected of friends and family?" or "What can the community mental health team provide?" or "Is a voluntary admission possible?"

Issues to be considered in deciding whether a person should be detained as a mentally ill person:

- is there a mental illness as defined in s4, and
- is there a risk of serious harm to the person or others, and
- has the person's continuing condition or likelihood of deterioration and its effects been considered, and
- is there a less restrictive environment in which appropriate care, control and treatment can be safely and effectively provided?

2.2 Who is a mentally disordered person under the Act?

Definition (s15)

A mentally disordered person is someone whose behaviour is so irrational that there are reasonable grounds for deciding that the temporary care, treatment or control of the person is necessary to protect them or others from serious physical harm.

What is irrational behaviour?

The term 'irrational behaviour' refers to behaviour which a member of the community to which the person belongs would consider concerning and not understandable. In deciding whether a person is 'mentally disordered', the only additional test for 'irrational behaviour' is that temporary care, treatment or control of the person is considered necessary to prevent serious physical harm to the person or others.

What is serious physical harm?

It has no special legal meaning and is to be understood in its everyday usage.

Is there a less restrictive environment for the provision of care and treatment? (s12(1))

A person must not be involuntarily admitted to, or detained in a mental health facility unless an authorised medical officer is of the opinion that:

- the person is a mentally disordered person, and
- no other care of a less restrictive kind, that is consistent with safe and effective care, is appropriate and reasonably available to the person.

Issues to be considered in deciding whether a person should be detained as a mentally disordered person:

- is the behaviour so irrational that temporary care, treatment or control is necessary?
- is there a risk of serious *physical* harm to the person or others?
- is there a less restrictive environment in which appropriate care, control and treatment can be safely and effectively provided?

! Mentally disordered

This category is most commonly used where a person is actively suicidal or out of control following a personal crisis, e.g. a relationship breakup. Intoxication (drugs and alcohol) and impulsivity often feature in these situations. The mentally disordered provisions can also be useful where a person is suffering from a condition such as dementia. They may provide caregivers with the breathing space in which to sort out other more appropriate care.

This section is not intended to include those who are simply drunk and disorderly, or who have engaged in some other form of antisocial behaviour. Evidence of mental disorder is required before this provision can be used.

2.3 Exclusion criteria (s16)

These have been included to prevent the Act's potentially broad compulsory detention powers being used to control behaviour that is not related to mental illness or mental disorder. In themselves, these criteria are neither

determinative nor even indicative of either mental illness or mental disorder within the meaning of the Act.

A person is therefore not to be defined as 'mentally ill' or 'mentally disordered' merely because of any one or more of the following:

- the person expresses or refuses or fails to express or has expressed or refused or failed to express or engage in a particular political opinion or belief or activity
- the person expresses or refuses or fails to express or has expressed or refused or failed to express or engage in a particular religious opinion or belief or activity
- the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular philosophy
- the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular sexual preference or orientation
- the person engages in or has engaged in immoral or illegal conduct or antisocial behaviour
- the person engages in or has engaged in sexual promiscuity
- the person takes or has taken drugs or alcohol
- the person has a developmental disability
- the person has a particular economic or social status or is a member of a particular cultural or racial group.

However, the exclusion criterion that refers to the taking of alcohol or drugs does not prevent the clinician considering behaviour resulting from intoxication or withdrawal from a substance, or the serious physiological, or psychological damage resulting from the use of a substance being used to meet the definition of a mentally disordered or mentally ill person (s16(2)). These factors may be relevant in deciding whether the consumer meet the definition of either a mentally ill person or a mentally disordered person.

2.4 Differences between a mentally ill and mentally disordered person under the Act.

The Mental Health Act specifies a different set of procedures and consequences for each category. These are dealt with under Involuntary Admissions (Guide Book Section 6).

2.5 Some other important definitions

Accredited person

An accredited person is a suitably qualified and experienced mental health practitioner, such as a nurse, psychologist or social worker, who is specifically empowered to write Schedule 1 certificates, usually in areas where there are insufficient doctors.

Assessable person

An assessable person is someone who has been detained in a declared mental health facility as a mentally ill person but has not yet been reviewed by the Mental Health Review Tribunal at a mental health inquiry (s17).

Authorised medical officer

An authorised medical officer is either the medical superintendent of a declared mental health facility, or a doctor who has been nominated by the medical superintendent to fulfil certain responsibilities and make various decisions under the Act.

Consumer

A person who has the experience of using mental health services or the experience of mental illness.

Declared mental health facilities

Declared mental health facilities are premises subject to an order in force under s109. These premises are declared by the Director-General to fulfill certain functions under the Act.

The three current classes of declared mental health facilities are:

- a mental health emergency assessment class that deals with short term detention for initial assessment and treatment
- a mental health assessment and inpatient treatment class that deals with the full range of inpatient functions under the Act
- a community or health care agency class to administer community treatment orders.

It is important for all those working with the Mental Health Act, in particular those with the authority to take a person to a declared mental health facility against their will (i.e. Accredited Persons, NSW Police, Ambulance Service) to be familiar with their local declared mental health facilities. A list of the current facilities can be found on the NSW Institute of Psychiatry website:

www.nswiop.nsw.edu.au

Involuntary patient

An involuntary patient is someone who is detained following a mental health inquiry before a single legal member of the Mental Health Review Tribunal, or following a subsequent Tribunal hearing before a three member panel.

Medical superintendent

The medical superintendent of a declared mental health facility is the senior medical practitioner, appointed in writing by the Director-General (or delegate), who holds a range of administrative responsibilities under of the Act. The medical superintendent is also an "authorised medical officer", and may be appointed as the medical superintendent of more than one declared mental health facility.

Primary carer

The term primary carer has a particular meaning for the purposes of the Mental Health Act. It is someone who is entitled to certain information about a consumer's care and treatment, and is entitled to be notified of certain events. A primary carer is generally someone nominated by the consumer who has a close personal relationship with them and an interest in their welfare (Guide Book Section 4).

Schedule 1 Certificate

A Schedule 1 Certificate provides the legal foundation for the majority of involuntary admissions in NSW. It can be completed by either a medical practitioner or an accredited person, and enables a person to be taken to a declared mental health facility against their will for the purpose of an assessment. The process of involuntary admission in NSW is commonly referred to as 'scheduling.'

Section 3

Consumer Rights under the Mental Health Act

People with a mental illness enjoy the same rights as anyone else in the community. These include the right to self-determination and to go freely about their daily business without undue interference. At times, however, a mental illness may result in behaviour that leads to those rights being curtailed.

It is the purpose of the Mental Health Act to:

- set out the circumstances in which this can happen
- provide a framework of checks and balances
- ensure that the interference with a consumer's rights, dignity and self-respect is kept to a minimum.

This section sets out the rights enshrined in the Mental Health Act in relation to:

- consumers detained under the Act
- those subject to community treatment orders.

It also looks at some of the agencies and individuals who have a particular role to play in ensuring that consumers have the opportunity to exercise those rights.

3.1 Rights of consumers detained under the Act

Right to liberty

The right to liberty is embedded throughout the Act. It is generally expressed in the principle of the least restrictive environment consistent with safe and effective care and treatment.

It is specifically expressed in:

- the right to internal review by an authorised medical officer or medical superintendent
- the right to external review of involuntary status by the Mental Health Review Tribunal (Guide Book Sections 7 - 9)
- the requirement that any restriction on the liberty of patients and other people with a mental illness or mental disorder and any interference with their rights, dignity and self-respect be kept to the minimum necessary in the circumstances (s68(f))
- the right of involuntary patients and other detained persons (s42) as well as primary carers (s43) to apply for discharge.

Right to procedural fairness

This right is expressed by the sections of the Act that require specific procedures

to be followed in:

- the process of involuntary admission (Guide Book Section 6)
- the processes of external review (Guide Book Sections 7 - 9).

Right to information - Statement of Rights (Schedule 3)

The Statement of Rights sets out:

- the procedures that must be followed once a consumer has been detained
- a consumer's rights throughout the process of involuntary detention.

The Statement of Rights should be given to a consumer as soon as possible after they have been detained in a mental health facility (s74).

Once a consumer has been detained, they have the right to:

- an oral explanation and written statement of their legal rights and entitlements
- a further explanation not later than 24 hours before their mental health inquiry if they were too unwell to understand the explanation or statement when it was first given
- an oral explanation in a language they can understand if they are unable to communicate adequately in English.

Once a consumer has been detained as an involuntary patient after a mental health inquiry, they must then be informed of their right to:

- request that the authorised medical officer discharges them (s42)
- appeal to a three member panel of the Mental Health Review Tribunal if the authorised medical officer refuses their request to be discharged, or fails to deal with the request within three working days (s44).

An involuntary patient or any other person detained under the Act may apply to an authorised medical officer to be discharged at any time.

Right to representation

The Act requires that assessable persons be represented by a lawyer:

- when the issue of their involuntary detention is being considered at a mental health inquiry, unless they decide not to be represented (Guide Book Sections 7 & 8).

This representation is offered free of charge by solicitors from the Mental Health Advocacy Service (Guide Book Section 3.3). If a consumer wishes to be represented by someone other than a lawyer, the Mental Health Review Tribunal's approval must be obtained (Schedule 2).

The Act also allows a consumer to be represented by a lawyer in other matters that come before the Mental Health Review Tribunal. The Mental Health Advocacy Service offers free representation in some of these matters (Guide Book Section 3.3). If the consumer wishes to be represented by someone other than a lawyer, the Tribunal's approval must be obtained (s154). Where a private solicitor appears for the consumer, the consumer will need to pay for this service.

Right to dignity

Respect for the individual's dignity is mentioned in the principles for care and treatment that underlie the Act as a whole. Consumers are also given the right to wear their own clothes to any hearing before the Mental Health Review Tribunal as a practical way of preserving their dignity. They are also to have access to shaving equipment and make-up (Mental Health Regulation s6).

Right to have one's primary carer notified

The Act specifies a number of situations when a consumer's primary carer should be notified. These provisions are covered in more detail in Section 4 and include:

- notification of the consumer's detention within 24 hours where practicable (s75)
- notification of a mental health inquiry (s76).

Right to an interpreter

Where the consumer has a limited grasp of English, or does not speak it at all, the mental health facility must ensure an interpreter is present (this may be by telephone):

- at medical examinations for the purposes of the Act (s70)
- to explain the consumer's rights and entitlements (s74(5))
- to assist at Mental Health Review Tribunal hearings (s158).

Right to access medical records

Under the Mental Health Act, a consumer and/or their lawyer have the right to access the consumer's medical records in relation to a mental health inquiry (Schedule 2) or other Mental Health Review Tribunal hearing (s156).

If a medical practitioner warns the lawyer that it may be harmful to the consumer, or any other person, to disclose certain information, the lawyer is not obliged to disclose this information to the consumer (Schedule 2, 6(3)). The Mental Health Review Tribunal can decide the matter in these cases (Schedule 2, 6(4)).

Reference should also be made to the NSW Health Privacy Manual. This supports the general right of consumers to see and obtain copies of information held about them by a health care facility at any time, and also lists the circumstances in which access may be refused. Privacy Officers are available in each Local Health District to assist consumers in accessing their medical records and informing them of any charges that will apply.

Application of the rates is set by NSW Health Policy - NSW Health Records & Medical/Clinical Reports:

http://www.health.nsw.gov.au/policies/pd/2006/pdf/PD2006_050.pdf

The actual charges to be applied are issued in a NSW Health Information Bulletin: Information Bulletin - NSW Health Records & Medical/Clinical Reports – Rates:

http://www.health.nsw.gov.au/policies/ib/2009/pdf/IB2009_044.pdf

Right to apply to be discharged

An involuntary patient or any other person who has been detained at a mental health facility has the right to apply to an authorised medical officer, either orally or in writing, to be discharged (s42).

The authorised medical officer has three working days to make a decision. If the consumer's application is not decided on within this time, or is refused, they can appeal to the Mental Health Review Tribunal.

If the consumer indicates their wish to appeal, this must be brought to the attention of the Tribunal. A written request is useful but not essential.

Rights in relation to medication

An involuntary patient (including a consumer who has been detained in a mental health facility):

- does not have the right to refuse appropriately prescribed medication (although they have the right to express their objection)

- does have the right to information about their medication, including side effects and dosages (s73).

The consumer's lawyer and their primary carer also have the right to information about the consumer's medication.

In prescribing medication, the mental health facility must:

- administer drugs with due regard to relevant professional standards (s85)
- prescribe medication to meet the health needs of the consumer and to meet therapeutic or diagnostic needs, and not as a punishment or for the convenience of others (s68(d))
- monitor and review the prescription and use of drugs in the mental health facility (s86).

The Mental Health Review Tribunal must:

- inquire into the medication of the consumer before them
- take into account the effect of the medication on the consumer's ability to communicate at the hearing.

Right to be involved in discharge and treatment plans

The principles for care and treatment in the Mental Health Act state that every effort that is reasonably practicable should be made to involve consumers with a mental illness or disorder in the development of treatment plans and plans for their ongoing care (s68(h)).

This principle is reinforced by a section that states that all reasonably practicable steps must be taken to ensure that the consumer and their primary carer are:

- consulted in relation to planning the consumer's discharge and subsequent treatment
- provided with appropriate information about follow-up care (s79).

Right to privacy and confidentiality

When a consumer is seen by the Mental Health Review Tribunal, their name, or any other detail that could identify them, is not to be broadcast or published in any way, without the consent of the Tribunal.

Right to protection from ill-treatment

No person employed in a mental health facility is allowed to wilfully strike, wound, ill-treat or neglect a patient or any other person detained under the Act (s69).

Right to request to see an official visitor

A consumer who is detained in a mental health facility or who is under a community treatment order, or a primary carer, can request to see an official visitor (s134), (Guide Book Section 3.3).

Other general rights

Consumers have other rights that are not mandated by the Mental Health Act. These may be drawn from other pieces of legislation or may generally be considered to comply with good practice.

Some of these include:

- right to receive and send mail without interference
- right to receive and make telephone calls, subject to considerations of safety
- right to speak with friends, lawyers, relatives etc. in privacy subject to considerations of safety
- right to be spoken to respectfully
- right to refuse to have students or others present while being interviewed or treated
- right to provide feedback about a service, including making a complaint.

3.2 Rights under a Community Treatment Order

As consumers who are being treated under a community treatment order (CTO) (Guide Book Section 10) are under fewer restrictions than consumers

detained in an inpatient mental health facility, the Mental Health Act does not set out a framework of rights in such detail.

However, the following rights apply:

- general rights of care and treatment set out in s68, including involvement where reasonably practicable in the development of their treatment plan (s68(h))
- to a treatment plan that clearly specifies reasonable times and places when treatment (including medication, therapy, counselling, management rehabilitation and other services) is to be provided (s56(1))
- to procedural fairness before the Mental Health Review Tribunal
- to be represented by a lawyer or other advocate before the Tribunal if such representation can be obtained
- to put their point of view to the Tribunal about the order
- to an interpreter, if required
- to access to their medical records in accordance with the NSW Health Privacy Manual or under s156 for matters before the Mental Health Review Tribunal
- to information about the medication they are required to take
- to appeal to a three member panel of the Tribunal against a CTO made at a mental health inquiry
- to appeal to the Supreme Court against a CTO made by a three member Tribunal panel.

3.3 Assisting consumers to exercise their rights

Although the Act makes provision for a variety of rights, it will often be difficult, if

not impossible for a consumer to exercise these rights without assistance. It is therefore important to consider who is in the best position to provide such assistance. In some cases this may be the staff from the inpatient mental health facility or the community mental health team.

In other cases, it may be more appropriate to involve someone outside the treating team. Where the consumer is from a culturally or linguistically diverse (CALD) or Aboriginal background, cross-cultural consultants and Aboriginal health workers have a particularly important role to play (Guide Book Section 15).

This section looks at some of the individuals and agencies that may be involved

in:

- assisting consumers to exercise their rights
- handling consumer complaints.

Mental Health Advocacy Service

The Mental Health Advocacy Service is part of the Legal Aid Commission of NSW. The solicitors from the Advocacy Service ensure that the consumer's views are clearly presented before the Mental Health Review Tribunal. It is their role to act on their client's instructions, and to ensure that the procedures and rights set out in the Mental Health Act are upheld.

The Advocacy Service provides a free telephone advice service on all aspects of mental health law. It can be contacted on (02) 9745 4277.

It provides free legal representation in the following circumstances:

- mental health inquiries that relate to a consumer's detention in an inpatient mental health facility or discharge on a community treatment order
- reviews of involuntary patient orders (s37(1)(a)) during the first 12 months after a consumer becomes an involuntary patient (these must occur at least once every 3 months (s37(1)(b))
- hearings before the Mental Health Review Tribunal that concern an order for the management of a consumer's finances under the NSW Trustee and Guardian Act 2009
- reviews by the Tribunal where consumers have been detained following a breach of their community treatment order (s63)

- applications to the Tribunal for a community treatment order for a consumer detained in a mental health facility where that consumer has specifically requested representation for the hearing.

It applies a merit and/or means test in the following circumstances:

- appeals to the Mental Health Review Tribunal against an authorised medical officer's refusal to discharge (s44)
- appeals to the Tribunal or Supreme Court against a community treatment order (s67(2))
- applications for first time community treatment orders when the consumer is in the community (s51(3))
- applications to the Tribunal for renewals of a community treatment order for a consumer in the community
- ongoing reviews by the Tribunal of involuntary patient orders after the first twelve months of detention (s37(1)(c)).

It does not represent consumers in the following matters:

- reviews of voluntary patient orders (s9)
- applications for electro convulsive therapy.

For further details and advice about representation, contact the Mental Health Advocacy Service (02) 9745 4277.

Official visitors

Official visitors are appointed by the Minister for Health (s129) to visit mental health facilities within each Local Health District. They are independent and come from a range of personal, professional and cultural backgrounds. Two or more official visitors visit inpatient mental health facilities, both public and private, at least once a month, and community mental health facilities at least once every 6 months.

An official visitor has the following functions (s129(3)):

- acts as an advocate for consumers to promote the proper resolution of issues arising in the mental health system, including issues raised by a consumer's primary carer (s129(3)(b))
- refers matters raising any significant public mental health issues or patient safety or care or treatment issues to the Principal Official Visitor or other appropriate body (s129(3)(a))
- inspects mental health facilities (s129(3)(c)).

While inspecting mental health facilities an official visitor must (s131):

- inspect every part of the facility
- examine the registers and records of mental health facilities
- make inquiries into the care, treatment and control of voluntary and involuntary patients
- make inquiries into the care, treatment and control of those who are under community treatment orders
- report their impressions and findings to the Principal Official Visitor or the Minister.

Official visitors may visit a facility with or without previous notice.

Contacting an official visitor:

A patient (either voluntary or involuntary), or a consumer who is subject to a community treatment order, or a primary carer, can ask to speak to or see an official visitor at any time. The inpatient or community mental health facility must pass on the request within 2 days (s134).

All mental health facilities promote contact with official visitors by:

- displaying a poster (available from the Official Visitors Program Office) about the role of official visitors with a telephone number on which they can be contacted
- providing a locked box in an accessible area where confidential messages can be left.

! Contacting an official visitor

Anyone with an interest in the care and treatment of a consumer with a mental illness can contact the Official Visitors' Answering Service on 1800 208 218 between 9am and 5pm Monday to Friday.

NSW Health Care Complaints Commission

The NSW Health Care Complaints Commission is an independent body with responsibility for dealing with complaints about health services or health providers.

The Commission has the power to investigate a wide range of matters including:

- the care and treatment delivered by a private or public health service organisation, e.g. hospital, nursing home, community health centre, clinic, medical centre, day surgery etc
- the care and treatment a person has received from a health practitioner, e.g. doctor, nurse, dentist, pharmacist, psychologist, chiropractor, naturopath, dietician etc.

While complaints must be in writing, the Commission encourages people to discuss the issues with the Commission's Inquiry Service before lodging a

complaint. It also encourages people to try and resolve their complaint directly with the health care provider wherever possible. However, where there is concern about a person's immediate health or safety, contact should be made immediately with an Inquiry Officer.

Health Care Complaints Inquiry Service:

9219 7444 or 1800 043 159

Further information: www.hccc.nsw.gov.au

Consumer workers

The majority of Local Health Districts employ a number of consumer workers. While their roles vary, most consumer workers spend part of their time providing peer support and advocacy to individual consumers. For example, they can assist someone who has a hearing before the Mental Health Review Tribunal, or someone who would like support when they go to see their case manager or psychiatrist. Consumer workers also participate in Local Health District committees, give talks and provide education to staff and non-government organisations.

Consumer workers can be contacted directly or staff in mental health facilities and community mental health teams can put people in touch with their nearest consumer worker. The contact details of many of the consumer workers across the state can be found at the NSW Consumer Advisory Group's (CAG) website www.nswcag.org.au (under Other Information).

Section 4

Primary Carers

One of the key issues to emerge from the Report of the Parliamentary Select Committee on Mental Health Services (2002) was how to enable relevant information to be shared with consumers and their carers, and how to support the involvement of both in treatment decisions.

“The submissions to the review recognised the importance of carers, including family members, being given access to information that would assist them in providing care. However, many submissions were concerned to ensure that a patient is given some capacity to control who is to be considered a primary carer. [The Act seeks] to balance these views by allowing a person to nominate a particular person to be their primary carer for the purposes of receiving information, allowing a person to identify a person whom they do not wish to have identified as the primary carer, and establishing a process for identifying who will be a carer when there is no nomination.” (Cherie Burton, Second Reading Speech, Legislative Assembly Hansard, 22 November 2006)

The Mental Health Act now acknowledges the role of carers:

- in a general way in the principles for care and treatment which state that the role of carers for people with a mental illness or mental disorder and their rights to be kept informed should be given effect (s68(j))
- through specific provisions that set out when a primary carer should be informed about particular aspects of a consumer’s care and treatment.

The primary carer provisions apply when someone is either a voluntary or involuntary patient, an assessable person, or under a community treatment order.

4.1 Who is a primary carer? (s71)

A primary carer for the purposes of the Mental Health Act is either:

- a) someone who has been appointed as the consumer's guardian under the Guardianship Act (Guide Book Section 12), or
- b) the parent of a child consumer subject to any nomination at (c) below (for discussion on issues relating to children and the Act see Guide Book Section 15), or
- c) if the child is over the age of 14 years and is not a person under guardianship, someone nominated by them as the primary carer, or
- d) if the consumer is not a person covered by paragraph (a) or (b) or (c) then the primary carer is:
 - i. the consumer's spouse or partner where the relationship is close and continuing (this includes de facto and same sex partners), or
 - ii. someone who is primarily responsible for providing support and care (though not on a wholly or substantially commercial basis*), or
 - iii. a close friend or relative who maintains frequent personal contact and interest in the consumer's welfare.

* A person in receipt of a Carer's Pension is not seen as providing care on a commercial basis and can therefore be considered as a primary carer.

While the Act establishes the formal hierarchy set out above, in most cases a primary carer will be someone nominated by the consumer, who has a close and personal relationship with them, and an interest in their welfare.

4.2 The nomination of a primary carer (s72)

A consumer who does not have a guardian, and who is over 14 years of age, can, if they wish, nominate a primary carer at any time. Where possible, it is preferable for this to occur before the stressful circumstances that often surround admission to a mental health facility. However, where this has not occurred, a primary carer should be identified as soon as possible following a consumer's detention in a mental health facility.

Once a primary carer has been nominated, reasonable attempts should be made to contact that person to inform them of the consumer's detention. Once the primary carer role has been explained and the person has accepted the role, the "Nomination of Primary Carer" form should be completed and recorded in the clinical notes. This nomination stays in force for 12 months, although it may be varied or revoked by the consumer in writing.

If the nominated person does not wish to become the primary carer, another appropriate person should be identified as soon as possible to ensure that there is an effective nomination in place.

Consumers may also nominate person(s) who are excluded from receiving information about them or exclude their primary carer from receiving certain information. However, a consumer over 14 years of age but under 18 years of age may not exclude a parent from receiving information.

It is the responsibility of the authorised medical officer or the director of community treatment to determine whether or not to proceed with the nomination (or variation or revocation).

However the nomination (or variation or revocation) of a primary carer should be given effect unless there are reasonable grounds for believing that:

- the consumer, the nominated person, or any other person may be put at risk of serious harm, or
- the consumer was incapable of making the nomination, variation or revocation.

While a consumer may refuse or find it difficult to nominate a primary carer when they are first admitted to a mental health facility, a primary carer can be determined from the hierarchy set out above. However, if the consumer (other than a child under the age of 14 or a consumer who is under guardianship)

later nominates someone as their primary carer, that nomination should be acted upon.

! Case example

A 15 year old girl with first episode psychosis is brought to hospital and detained as a mentally ill person. She discloses a family history of sexual abuse involving her parents. The girl nominates her aunt as her primary carer. In this case the authorised medical officer is not required to contact the parents if they reasonably believe that to do so would put the girl at risk of serious harm. In complex circumstances such as these, the primary carer provisions do not override other relevant Departmental Policies, e.g. Protecting Children and Young People PD2005_299.

4.3 When should the primary carer be notified?

An authorised medical officer must take all reasonably practicable steps to ensure that the primary carer (unless the primary carer is excluded by the consumer from being provided with certain information) is promptly notified of:

- the consumer's detention within the first 24 hours after they are detained in a mental health facility, unless they are discharged or classified as a voluntary patient within that period (s75)
- an upcoming mental health inquiry (s76) (this should be in the form set out as Form 2 (Clause 5) of the Mental Health Regulation 2007.)
- an unauthorised absence from a mental health facility (s78(1)(a))
- a proposed transfer between mental health facilities (s78(1)(b))
- the consumer's discharge (s78(1)(c))
- the consumer's reclassification as a voluntary patient (s78(1)(d))
- an application to the Mental Health Review Tribunal for electro convulsive therapy (s78(1)(e))
- an urgent surgical procedure (s78(1)(f))
- an application to the Director-General or Mental Health Review Tribunal for consent to a surgical operation or special medical treatment (s78(1)(g)) (Guide Book Section 13).

4.4 Requests made by a primary carer

A primary carer can request or apply for the following:

- a consumer's detention at a mental health facility (s26) (Guide Book Section 6)
- information about the types and dosages of medication being administered (s73)
- the consumer's discharge into their care providing they give a written undertaking that the consumer will be properly taken care of, and the authorised medical officer is satisfied that there is an adequate plan in place to prevent harm to either the consumer or to others (s43)
- an appeal to the Mental Health Review Tribunal where the authorised medical officer refuses a request made by the consumer or their primary carer for discharge (s44)
- a community treatment order (s51)
- to see an official visitor (s134).

Apart from a request for information about medication, a request to see an official visitor, or an appeal to the Mental Health Review Tribunal, these requests should ideally be made in writing.

4.5 Involving primary carers in discharge planning

A consumer's primary carer should be consulted in relation to the consumer's discharge and the proposed follow up care and treatment (s79). Some guidance is provided in the Mental Health Regulation as to the sort of information that should be provided about follow up care, including:

- patient support groups and community care groups in the consumer's vicinity
- available out patient services
- the purpose and method of obtaining community treatment orders .

4.6 Primary carers and treatment in the community

Section 72(6) specifies that a director of community treatment is to give effect to a primary carer nomination. Where a consumer is on a community

treatment order, the director must also provide that consumer with information about the medication being given under the treatment plan, if requested by a primary carer (s57(4)(b)).

4.7 The importance of the primary carer provisions

“I need to know what you are trying to achieve for my son and how you are planning to do it. I need to understand the treatment that he is receiving so that I can play my part in his recovery program. What I do not need to know are the personal details of what takes place between him and the professionals concerned.”

(Member of Rethink 2006 whose son has a serious mental illness.)

The primary carer provisions in the Act do not resolve all the issues of confidentiality and information sharing between mental health professionals and carers. Guidelines for good practice still need to be developed to assist clinicians in their discussions with individual consumers and carers.

However, clinicians can play an important role in reducing any fears a consumer may have about nominating a primary carer by emphasising that these provisions do not give the carer authority or decision making power over the consumer. Nor do they oblige the clinician to discuss personal aspects of the consumer’s experience. The purpose of these parts of the Act is to ensure that the carer has information about the consumer’s illness and treatment that enables them to support the consumer’s welfare and recovery.

4.8 Family and Carer Mental Health Support Program

This Program aims to:

- improve family/carer wellbeing
- improve outcomes for consumers
- increase family/carer knowledge and ability to manage their caring role effectively
- promote open communication between services about family/carer issues.

It is run by four non government organisations (NGOs) across NSW who provide:

- education and training to build coping skills and resilience
- individual support, information, advocacy and peer support.

Please see Appendix 5 “Useful contacts” for a list of the organisations running this program.

Section 5

Voluntary Patients

5.1 Who is a voluntary patient?

A voluntary patient is a consumer who:

- has chosen to be admitted to a mental health facility
- is under guardianship and has been admitted at the request of, or with the consent of their guardian (s7)
- has been admitted as an involuntary patient and is reclassified by an agreement between the consumer and an authorised medical officer (s40).

5.2 Criteria for admission (s5)

In deciding whether someone will be admitted as a voluntary patient, an authorised medical officer needs to be satisfied that the person is likely to benefit from inpatient care and treatment in a mental health facility.

5.3 Reclassifying a patient from voluntary to involuntary (s10)

Under s10, if an authorised medical officer is of the opinion that the voluntary patient is a mentally ill person or a mentally disordered person, that patient can be detained.

Although a Schedule 1 certificate is not required in these circumstances, the authorised medical officer should make a written record of their reasons for detaining the consumer.

Once these notes have been recorded, the further examinations required under s27 must occur.

5.4 Discharge of a voluntary patient (ss7 & 8)

The following provisions apply to the discharge of a voluntary patient:

- A voluntary patient may discharge themselves at any time.

- An authorised medical officer may discharge a voluntary patient if they decide that the patient is unlikely to benefit from further inpatient care and treatment.
- Where a voluntary patient is under guardianship, notice of the discharge must be given to the patient's guardian.
- Where a patient is under guardianship, they must be discharged at the request of their guardian.
- Where a voluntary patient has a nominated primary carer, that person should be notified of the discharge (unless they have been legitimately excluded from receiving that specific information).

5.5 Avenues of review

Review of decision of authorised medical officer (s11)

- A consumer who has been refused admission as a voluntary patient by an authorised medical officer (other than the medical superintendent) may apply to have that decision reviewed by the medical superintendent.
- A consumer who has been discharged by an authorised medical officer may apply to have that decision reviewed by the medical superintendent.
- The medical superintendent must review the decision as soon as practicable.

Review of a voluntary patient by the Mental Health Review Tribunal (s9)

The Mental Health Review Tribunal must review the case of every voluntary patient who has been in a mental health facility for a continuous period of more than 12 months.

At this review, the Tribunal considers:

- the care and treatment the patient is receiving
- whether appropriate care is available outside a mental health facility
- whether the patient consents to remaining as a voluntary patient

- the patient's capacity to understand their position as a voluntary patient.

At this review, the Tribunal may:

- order the patient's discharge
- order the patient's discharge but defer the discharge for up to 14 days if it is in the patient's best interest
- decide to make no order, which in effect continues the patient's ongoing voluntary care and treatment.

The medical superintendent must ensure that applications are faxed to the Tribunal at least five working days before the requested date for the hearing. This allows Tribunal staff to ensure that the preferred hearing time is available.

For further information see Section 2 of the Mental Health Review Tribunal Hearing Kit: www.mhrt.nsw.gov.au (under Civil Patients).

Section 6

Involuntary Admissions

The Mental Health Act provides a number of ways in which the process of involuntary admission to an inpatient mental health facility can be initiated. The initial documentation required may include file notes and/or the forms required under the Act.

In 2008-2009, for example, there were 15,966 involuntary admissions in NSW. Most of these (64%) were initiated by the certificate of a doctor (or accredited person), 17% when the person was brought to a mental health facility by police, 9% when a patient was reclassified from voluntary to involuntary, and 6% when the request for admission was made by a primary carer, relative or friend. Most of those who were involuntarily admitted were detained as 'mentally ill' (73%), rather than as 'mentally disordered' (27%) persons.

6.1 Pathways to involuntary admission – getting the person to a declared mental health facility

Where a person is taken from the community to an inpatient unit for a mental health assessment against their will, the Mental Health Act requires that they be taken to a declared mental health facility. Currently, a person may be taken to a declared mental health inpatient unit, a declared emergency department or declared Psychiatric Emergency Care Centre (PECC). A list of declared mental health facilities can be found at the NSW Institute of Psychiatry website. <http://www.nswiop.nsw.edu.au/>

Detention on certificate of a medical practitioner or accredited person (s19) (Schedule 1)

A person may be taken to and detained in a declared mental health facility on the certificate of a medical practitioner or accredited person where:

- the practitioner or accredited person has personally examined or observed the person immediately or shortly before completing the certificate, and

- the practitioner or accredited person has formed the opinion that the person is either a 'mentally ill' (s14), or a 'mentally disordered' person (s15), and
- the practitioner or accredited person is satisfied that involuntary admission and detention is necessary (and that there is no other less restrictive care reasonably available that is safe and effective), and
- the practitioner or accredited person is not the primary carer or a near relative of the person.

! Personal examination or observation

Under this section an examination may be conducted by video conference, but only where it is not possible for a clinician to be physically present. In these circumstances the clinician conducting the examination needs to be satisfied that they are able to assess the person with sufficient skill and care so as to be able to form an opinion regarding the person's mental state. An examination by way of video conference should, however, only be used as an examination of last resort.

The certificate completed by the medical practitioner or accredited person:

- must be in the form set out in Part 1 of Schedule 1 is valid for 5 days for a 'mentally ill person' and 1 day for a 'mentally disordered person'.

The Schedule 1 is an important legal document that:

- deprives a person of their liberty for the purpose of ensuring a further assessment
- authorises their transport to and detention in a declared mental health facility against their will.

It also:

- communicates pertinent information to other professionals involved in the person's admission
- becomes part of the person's medical record
- is scrutinised by the Mental Health Review Tribunal at a mental health inquiry.

While the information provided on the Schedule 1 is legally sufficient to

commence the process of involuntary admission, where possible it should be accompanied by additional material such as a referral letter or history and mental state examination. This will provide a more detailed picture of the person's circumstances for the subsequent authorised medical officers.

Detention on the information of an ambulance officer (s20)

An ambulance officer may take a person to a declared mental health facility against their will if the officer believes on reasonable grounds that the person appears to be mentally ill or mentally disturbed and it would be beneficial to the person's welfare.

Where there are concerns about the person's physical health, they will transport the person to the nearest appropriate hospital so that the person can receive an assessment of their physical health to exclude any underlying physical causes for their presentation.

The preference is for the person to be transported to an emergency department that is a declared mental health facility, or where necessary, to an emergency department en route to a declared mental health facility. The latter should only be necessary in remote areas where there are long distances between declared mental health facilities.

Where a person is taken to a mental health facility under this section, they will not be charged for this service.

Request for police assistance by medical practitioner, accredited person or ambulance officer (s21)

A medical practitioner or accredited person who has completed a Schedule 1 under section 19 may request the assistance of police where there are serious concerns about the safety of the person or others if the person is transported without police assistance (s19(3)).

In these circumstances the medical practitioner or accredited person must complete Part 2 of Schedule 1. Part 2 must be completed by the same person who completed Part 1 (s19(3)).

An ambulance officer can also request police assistance if they are of the opinion that there are serious concerns relating to the safety of the person or others in getting the person to a mental health facility (s20(2)).

Where the police receive a request for assistance they must, if practicable, either take or assist in taking the person to a mental health facility or arrange for another officer to do so (s21).

In these circumstances, police may enter premises without a warrant and exercise powers under s81 (Guide Book Section 14).

Detention by the police (s22)

The police may apprehend someone and take them to a declared mental health facility where the person appears to be mentally ill or mentally disturbed, and the police have reasonable grounds for believing that either:

- the person is committing or has recently committed an offence, or
- the person has recently attempted, or is at risk of, killing themselves or another person, or
- it is probable that the person will attempt to cause physical harm to themselves or another person, and
- it would be beneficial to the person's welfare for them to be dealt with under the mental health legislation rather than being dealt with under the criminal law.

Police do not need a warrant in these circumstances to apprehend the person and may apprehend them in any place.

Detention following an order by a Magistrate for medical examination or observation (s23)

If a Magistrate (or authorised officer within the meaning of Criminal Procedure Act) is satisfied that:

- a person may be 'mentally ill' or 'mentally disordered', and

- the person could not be personally examined due to physical inaccessibility, then the Magistrate may make an order authorising:
 - a medical practitioner or accredited person to visit and personally examine or observe the person
 - a police officer (or other person) to accompany and assist the medical practitioner or accredited person.

If an order is made under s23, the person authorised to visit the person (or authorised to accompany that person) may enter the premises, by force if necessary, to enable the examination to take place.

Where this section is used, a medical practitioner or accredited person may complete a Schedule 1, and must notify the Magistrate of the outcome of their examination.

Detention on order of Magistrate or bail officer (s24)

This section is used where a Magistrate is of the opinion that the person appearing before them in a criminal matter is a mentally ill person who requires a psychiatric assessment. The person is taken to a declared mental health facility in accordance with an order made under Section 33 of the Mental Health (Forensic Provisions) Act 1990.

Detention after transfer from another health facility (s25)

A person can be transferred from a health facility to a declared mental health facility and detained, if a medical officer of the health facility or the authorised medical officer of the mental health facility considers the person to be a mentally ill or mentally disordered person.

In these cases, the person will be deemed to have been detained in the mental health facility under section 19.

While a Schedule 1 is not required, there should be written documentation outlining the reasons for the transfer and stating why the person is considered mentally ill or mentally disordered.

Detention on request of a primary carer, relative or friend (s26)

A person may be detained on the written request of a primary carer, relative or friend to an authorised medical officer of a mental health facility. This section is used in remote areas where distance and the urgency of the situation make it impractical for the person to be seen by a medical practitioner or accredited person. In 2008, this occurred on 928 occasions.

6.2 After the person gets to a declared mental health facility – examination requirements

The different processes set out above deal with getting a person lawfully to a declared mental health facility. Once they have arrived however, the Mental Health Act requires 2 (and in some cases 3) further examinations, for the person to continue to be detained. The results of these examinations must be written up on the appropriate form (Form 1). A medical practitioner involved in the initial ‘scheduling’ of a person must not take part in these further examinations.

Any medical practitioner conducting an examination may take into account their own observations and any other available evidence that they consider reliable and relevant (s28). Where necessary, these examinations may occur via video conference subject to the limitations mentioned previously (see page 36). While the immediate circumstances leading to the person’s detention are clearly significant, it is also important to consider the person’s ‘continuing condition,’ including the views of friends or relatives who may have accompanied the person to the mental health facility.

At any time throughout these examinations a person may be reclassified as a voluntary patient. This can occur when the authorised medical officer believes that it would be beneficial and the person agrees to stay (s30).

First examination (s27 (a))

The first examination must be conducted by an authorised medical officer as soon as practicable (but within 12 hours). Where the person is found to be neither ‘a mentally ill person’ nor ‘a mentally disordered person’, they must be

released.

Where the person is found to be either 'a mentally ill person' or 'a mentally disordered person', they must be seen by a second doctor.

Second examination (s27 (b))

The second examination must:

- occur as soon as possible
- be conducted by a psychiatrist (unless the first examination was conducted by a psychiatrist).

Where at least one of these doctors finds that the person is 'a mentally ill person', they must be reviewed at a mental health inquiry.

Where both doctors agree that the person is 'a mentally disordered person', then they can be detained for up to 3 days (not including weekends or public holidays).

Where the second doctor finds the person neither 'a mentally ill person' nor 'a mentally disordered person', a third examination must occur.

Third examination (s27(c))

The third examination must:

- occur as soon as practicable
- be conducted by a psychiatrist.

The decision made by the third doctor determines whether the person is discharged, or detained as 'a mentally disordered person' or as 'a mentally ill person'.

The third examination must take place "as soon as practicable" after the relevant finding in the second examination. What is "as soon as practicable" will depend on the situation and in some rural areas it may take longer to arrange the third examination.

While awaiting the third examination, the person must be discharged (or

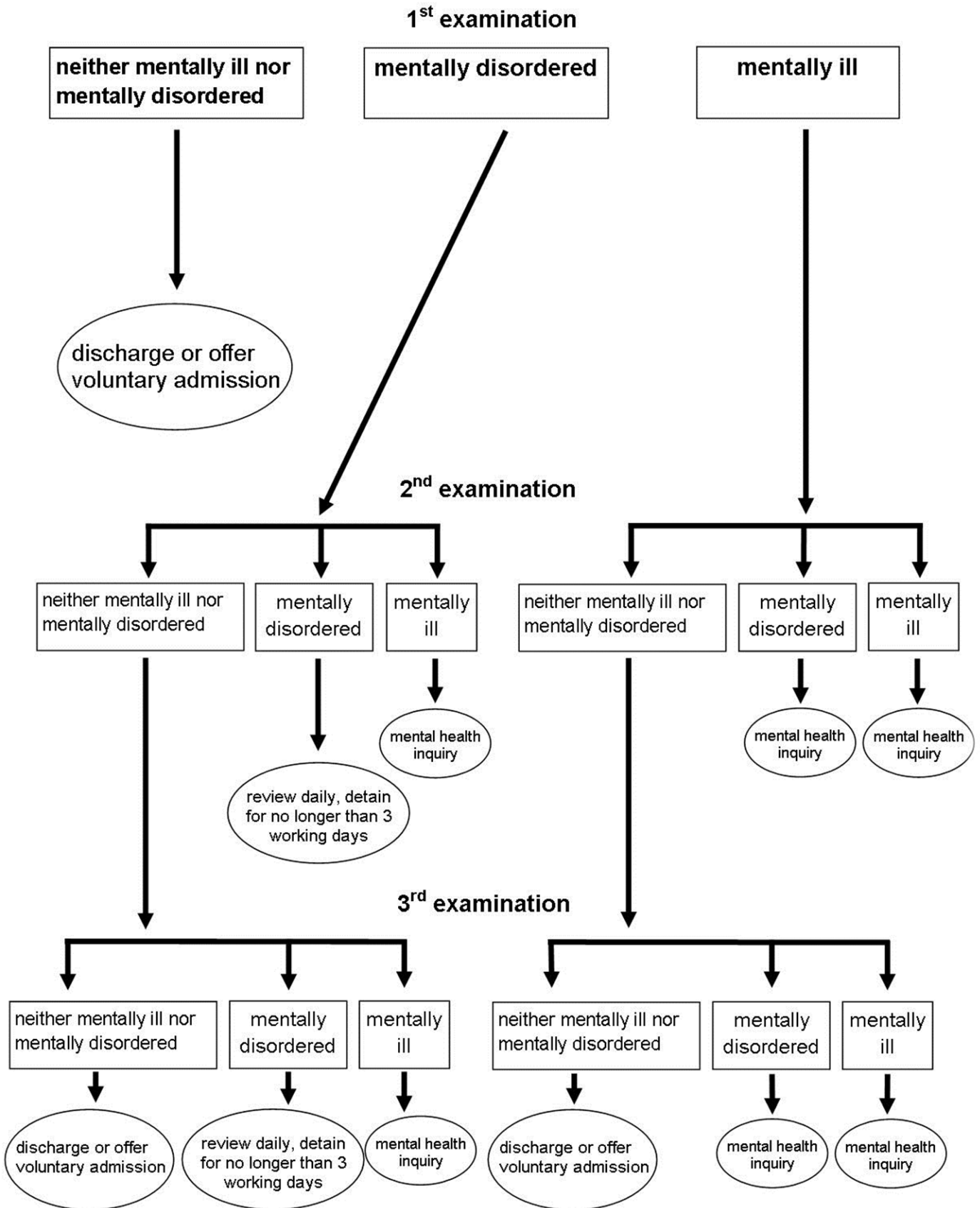
admitted as a voluntary patient) if the authorised medical officer is of the opinion that the person is no longer a mentally ill person or a mentally disordered person or that care of a less restrictive kind is now available (s12).

Where a person requires medical attention

While the requirements of the examination procedures will generally be followed, there may be times when a person's physical condition or illness requires urgent attention. In those cases the examination procedures may be delayed until the person's physical condition has been stabilised (s33).

Examination Procedures under s27 Mental Health Act 2007

Prior to undertaking a medical examination under s27, the authorised medical officer needs to ensure that the person has been detained under one of the mechanisms outlined in s18, and needs to ensure that any relevant documentation relating to their detention has been completed. For more information on mechanisms for detaining persons under the Act see Section 6.1 of the Guidebook.



6.3 Being detained as a mentally ill or mentally disordered person

Consequences of being detained as mentally disordered (s31)

Once a consumer has been detained as a mentally disordered person, they can be detained for up to three continuous days, not including weekends and public holidays. The consumer may be confined and given treatment against their wishes.

In addition the consumer:

- must be examined at least every 24 hours by an authorised medical officer
- must be released if an authorised medical officer decides the consumer is no longer a mentally disordered person or that care of a less restrictive kind is appropriate and reasonably available
- may not be detained on the grounds of being a mentally disordered person on more than three occasions in any one calendar month.

In some circumstances a medical officer may consider a consumer to be 'mentally disordered' at the end of an initial three working day period. In these circumstances, a paper discharge may be completed and the examination procedures required by the Act complied with again, i.e. a Schedule 1 and two Form 1s must be completed.

? Q John was scheduled as a mentally disordered person on Wednesday the 16th March, and held for 2 consecutive periods. As weekends are excluded, John was discharged on the 24th. He was readmitted as a mentally disordered person on Monday the 11th April. John remains disturbed and irrational in his behaviour on the 14th April. Can he be detained for a further consecutive period?

A No. He would have to be discharged on the 14th April. This is because the 'month' stipulated in the Mental Health Act, is a rolling calendar month. It does not start anew on the first day of the new month.

Consequences of being detained as mentally ill

Once a consumer has been detained as a mentally ill person under s27, they

must be reviewed by the Mental Health Review Tribunal at a mental health inquiry as soon as practicable (Guide Book Section 7.2). They can be confined and given treatment against their wishes in accordance with the Mental Health Act. However, medication must be prescribed at the minimum level consistent with proper care, to ensure that the consumer can communicate with their legal representative before the mental health inquiry (s29).

6.4 Detained consumer's right to information (s74)

Once a consumer has been detained at a mental health facility, they must be given an oral explanation and written statement of their rights (Schedule 3).

This must occur as soon as is practicable and the oral explanation must be in a language the consumer understands. Where the consumer has not been capable of understanding the first explanation, it must be repeated no later than 24 hours before the mental health inquiry.

During this interim period, the consumer can seek advice from the Mental Health Advocacy Service regarding their detention and may apply to be discharged (Guide Book Section 3.3).

6.5 Discharge of those who do not meet criteria for involuntary admission

General discharge procedure

In discharging a consumer who has been assessed and found not to satisfy the criteria for involuntary admission, consideration should be given to the consumer's welfare and their ability to return safely to the community. For mental health inpatient services, discharge planning is part of the continuum of care that starts with the consumer's admission.

The NSW Health Policy Directive "Discharge Planning for Adult Mental Health Inpatient Services" establishes a detailed set of principles and procedures to guide and inform the discharge process - www.health.nsw.gov.au/policies

! Discharge

An involuntary patient or any other consumer detained under the Mental Health Act must be discharged at any time if the authorised medical officer decides that safe and effective care of a less restrictive kind is appropriate and available, or decides that the consumer has ceased to be a 'mentally ill', or 'mentally disordered' person. The consumer may be immediately re-admitted as a voluntary patient where appropriate.

Person referred for assessment by court order or taken to a mental health facility by police

Where a person has been referred to a mental health facility for assessment by a Magistrate under the Mental Health (Forensic Provisions) Act 1990, the court order will specify whether or not the person is to be returned to court if they are found not to meet the criteria for involuntary admission.

If the person is ordered to be returned to court, in some cases a relevant person (being the person who brought the person to the mental health facility) will be still be present to find out the results of the examination. In such cases, the authorised medical officer must release the person into the custody of the relevant person (s32). If the relevant person is not present, the authorised medical officer must notify the police of their decision and detain the person until the police arrive. The police must take charge of the person as soon as practicable (s32(5)).

Where the court order does not require the person to be returned to court, or the person was brought to the mental health facility because the police officer believed they had committed an offence, the mental health facility must:

- release the person into the custody of any police officer who is present, or
- notify the appropriate police station of the decision not to further detain the person and ascertain whether the police intend to apprehend them.

At this stage, the mental health facility may:

- detain the person for up to one hour to enable the police to attend
- admit the person as a voluntary patient
- discharge the person, if possible, into the care of their primary carer
- discharge the person (s32(4)).

If the police do not wish to proceed any further with the matter, the mental health facility may:

- discharge the person into the care of a relative or friend where possible, or
- admit the person as a voluntary patient where appropriate, or
- discharge the person with consideration to their welfare.

6.6 Interstate transfers of involuntary patients

At the time of publication, while Agreements and Guidelines are operational with Victoria, Queensland, ACT and South Australia for the interstate transfer of involuntary patients, these are currently under review. Further information about these matters can be found at the Department of Health website at www.health.nsw.gov.au/aboutus/legal/agreements.asp

Section 7

Introduction to the processes of review

The Mental Health Act establishes two important external processes of review for consumers whose liberty or rights are significantly interfered with as a result of their mental illness. These are the mental health inquiry, conducted on most occasions by a single legal member of the Mental Health Review Tribunal, and the Tribunal sitting as a three member panel.

The Act specifies that these processes are to be conducted with as little formality and technicality as the circumstances of the case permit.

7.1 Procedural fairness and a non-adversarial approach

The concept of procedural fairness in general requires that:

- the Mental Health Review Tribunal be fully informed of all relevant aspects of the consumer's case, and
- the consumer concerned be able to hear what is being proposed, and have the opportunity to state their views either directly or through their legal representative.

The Mental Health Act promotes procedural fairness in a number of specific ways:

- hearings are open to the public (unless the Mental Health Review Tribunal orders the hearing to be conducted in private)
- at a mental health inquiry, the assessable person is represented by a lawyer, or another person of their choosing with the approval of the Tribunal (unless they decide that they do not want such representation)
- any other person appearing at the mental health inquiry may be represented by a lawyer with the leave of the Tribunal
- the consumer's primary carer may speak at any hearing with the approval of the Tribunal
- the names of those appearing before the Tribunal are generally not published or broadcast (without the consent of the Tribunal)

- at any Tribunal hearing, the consumer is entitled to have access to their medical records (unless the Tribunal decides this would be harmful)
- the consumer's representative is entitled to have access to the relevant medical records (and may withhold harmful information from the consumer)
- the consumer is entitled to be assisted by a competent interpreter where they are unable to communicate adequately in English
- proceedings are recorded but are not usually transcribed unless there is a specific request from the consumer's legal representative
- the decisions of the Tribunal are recorded in the form of a legal order.

While the Act establishes some rules for the conduct of hearings, individual Tribunal panels have a wide discretion in determining how they will proceed.

The mental health and legal systems do not always sit easily together, and frustration on all sides is not uncommon. However, the careful preparation of reports by mental health professionals can make a significant difference to the conduct of these hearings.

Section 8

Mental Health Inquiry

In June 2010 the mental health inquiries which had previously been conducted by Magistrates were transferred to the Mental Health Review Tribunal. These inquiries are generally the first time a consumer, who has been detained as a mentally ill person, has this decision reviewed by someone outside of the health system.

These hearings are generally conducted by a single legal member of the Tribunal, although there is a power to refer the matter to a three member panel. They take place on a regular basis at each inpatient mental health facility and are generally held after a consumer has been detained for a minimum of two weeks. This means that most consumers will have their case considered by the Tribunal three to four weeks after their admission to the mental health facility. Most cases are heard by video-conference, though face-to-face hearings are conducted at some major mental health facilities.

! Mental health inquiry

The purpose of the inquiry should be clearly explained to consumers and their families. It is important that they understand that it is not a criminal proceeding but an opportunity for an independent person to hear from both the mental health facility and the consumer who has been detained.

8.1 Preparing for a mental health inquiry

Once a consumer has been detained as an assessable person, the mental health facility must:

- notify the consumer's primary carer of the proposed mental health inquiry (s76)
- prescribe the minimum medication, consistent with proper care, to ensure that the consumer can communicate adequately with their legal representative before the hearing (s29)

- ensure that the consumer is given an explanation of the hearing in a language that they understand (s74)
- ensure that, where reasonably practicable, the consumer appears in street clothes (s34) and is supplied with make-up or shaving equipment where reasonable practicable
- ensure that all the appropriate medical witnesses and relevant medical evidence is ready for the hearing (s34)
- arrange for a competent interpreter to be present where necessary (Schedule 2, s1(4))
- organise legal representation where appropriate
- facilitate the legal representative's access to the consumer's medical records before the hearing.

8.2 Precise documentation

The Mental Health Review Tribunal will need to see the following documents:

- the Schedule 1 or other admitting document
- the Form 1s completed by the examining doctors (there will be either 2 or 3 of these)
- the consumer's file and hospital notes
- a report from the psychiatric registrar and/or consultant psychiatrist
- any other relevant information.

8.3 Preparing a report

The report from the psychiatric registrar and/or consultant psychiatrist plays a crucial role at the mental health inquiry.

The report should address the following issues:

- that the consumer is a 'mentally ill person' as defined by the Act (s14)
- that the order requested is the least restrictive alternative consistent with safe and effective treatment and care.

The report should be signed and clearly state:

- consumer's name, address and date of birth

- author's name and relationship to the consumer
- relevant treatment history
- kind of order requested – involuntary patient order, community treatment order, adjournment
- proposed duration of order requested
- treatment plan or options
- consumer's attitude to treatment
- relevant symptomatic behavioural issues.

A report should:

- summarise the facts and opinions upon which the request is made
- state whether these facts and opinions have been drawn from the author's direct observations or from other specified parties.

Some mental health facilities routinely prepare a social work report in addition to the medical reports. These can assist by providing relevant information about the consumer's background, social and family context. This information is often important in examining the issue of 'the least restrictive alternative'. A social worker's report is also generally required if the Mental Health Review Tribunal is asked to find that a consumer is incapable of managing their financial affairs. In these cases, an order for management is made under the NSW Trustee and Guardian Act (Guide Book Section 12)

! A good report can:

- minimise the need for distressing background details about the consumer to be raised (or emphasised) during the hearing
- provide a basis for understanding and/or negotiation between the mental health facility, the consumer and consumer's legal representative
- focus the scope of the mental health inquiry and therefore reduce the consumer's confusion and/or distress.

8.4 Answering questions at a mental health inquiry

The written report should provide the basic information that the Mental Health Review Tribunal will need to consider in making a decision. However, the

Tribunal and the consumer's representative will often wish to ask questions that:

- clarify or expand on matters contained in the report
- test matters of opinion expressed
- explore alternative treatment options
- build a clearer picture of the consumer's individual circumstances.

There is often a difficult balance to be struck between:

- giving the consumer an opportunity to hear what the mental health facility considers is in their best interests, and
- conveying information that is unnecessarily distressing or humiliating.

It is therefore important to think about:

- what needs to be said
- how this can be clearly expressed in lay language (to minimise confusion for the lawyer, Tribunal, consumer, family and friends).

8.5 Assisting the consumer to prepare for a mental health inquiry

While an individual consumer's ability to comprehend and participate in the proceedings will vary widely, mental health staff (along with the consumer's legal representative) can play an important role in assisting the consumer to prepare for the hearing. The involvement of interpreters, cross-cultural consultants and

Aboriginal mental health workers should also be considered at this stage.

Before the mental health inquiry, consumers should be given:

- a clear explanation of their rights
- information relating to the possibility of the Mental Health Review Tribunal making an order that the consumer's estate is to be managed by the NSW Trustee (s43 NSW Trustee and Guardian Act 2009)
- a clear explanation of the order the mental health facility is seeking
- a brief description of the hearing, including:
 - where it will be held

- who will be there
- who will speak and in what order
- the kinds of things the Tribunal might ask them
- the kind of decision that the Tribunal might make
- a private and appropriate place to discuss the matter with their lawyer
- an opportunity to ask questions about the process
- encouragement to think about what they might want to tell the Tribunal
- the opportunity to have someone else present at the inquiry to speak about their situation, e.g. a friend, family member or primary carer.

8.6 The mental health inquiry

Each Tribunal panel will have its own approach, though all will be guided by the need to avoid unnecessary technicality. It is their job, however, to ensure that the requirements of Mental Health Act are observed. The Tribunal will check the documentation accompanying the admission, e.g. the Schedule 1 and Form 1s to ensure it has jurisdiction to conduct the inquiry.

The Tribunal must also:

- ensure that the consumer has been given a written Statement of Rights
- ensure that the consumer and their primary carer were notified of the inquiry
- inquire into the consumer's medication and take into account its effect on their ability to communicate (s35(2)(c))
- take into consideration any cultural factors that may be relevant to the question of mental illness (s35(2)(d) & (e)).

While the Act gives the Tribunal the authority to issue a summons and administer an oath, in practice these powers are rarely exercised.

Having heard from all the parties, the Tribunal then decides, on the balance of

probabilities, whether the consumer is or is not a 'mentally ill person'. That is, the Tribunal considers whether it is more likely than not that the consumer is a mentally ill person.

8.7 What can the Mental Health Review Tribunal decide?

Adjourning the matter (s36)

The Mental Health Review Tribunal may decide to adjourn the hearing for up to 14 days if they:

- have considered all the relevant documentation, and
- are of the opinion that it is in the best interests of the consumer.

An adjournment may also be ordered where the Tribunal is not satisfied that:

- the consumer and their primary carer have been given proper notice about the inquiry
- the consumer has been informed of their legal rights.

If the matter is adjourned, the consumer continues to be detained and may be given treatment against their wishes. During this time, the consumer may request that the authorised medical officer discharges them and, if this is refused, appeal to a three member panel of the Tribunal (s44).

The consumer must also be discharged or admitted as a voluntary patient if the authorised medical officer, at any time, decides the consumer is no longer a mentally ill person or that other care of a less restrictive kind is appropriate and reasonably available.

Finding the consumer to be a mentally ill person (s35(5))

If the Mental Health Review Tribunal decides that the consumer is a mentally ill person, it may:

- discharge the consumer into the care of their primary carer
- discharge the consumer on a community treatment order of not more than 12 months

- make an involuntary patient order directing that the consumer be detained for a period of up to three months.

Once the Mental Health Review Tribunal has made an involuntary patient order, it must consider the consumer's capacity to manage their financial affairs. If it is satisfied that the consumer is not capable of managing their affairs, then it must make an order for financial management under the NSW Trustee and Guardian Act (s44) (Guide Book Section 12). Such an order can later be revoked by the Mental Health Review Tribunal once the consumer is no longer a patient if the Tribunal is satisfied that the consumer can manage their own affairs (s88 NSW Trustee and Guardian Act).

Once an involuntary patient order has been made, the consumer should be advised of their rights to:

- request that the authorised medical officer discharge them (Your rights after the mental health inquiry)
- appeal to a three person Tribunal panel if the authorised medical officer refuses their application for discharge, or fails to make a decision within three working days (s44).

A consumer's primary carer may also apply at any time for their discharge.

An authorised medical officer may discharge the consumer if:

- the primary carer gives a written undertaking that the consumer will be properly taken care of, and
- the medical officer is satisfied that adequate measures are in place to ensure the safety of the consumer and others (s43).

Finding the consumer not to be a mentally ill person (s35(3) & (4))

If the Mental Health Review Tribunal decides that the consumer is not a mentally ill person, it:

- must discharge them, or
- defer the discharge for up to 14 days if this is in the consumer's best interests.

8.8 Considering the options

Some of the difficulties that accompany a mental health inquiry may be unavoidable. However, a better understanding of the legal framework can promote a non-adversarial approach and in certain cases give mental health practitioners more flexibility in working with involuntarily detained consumers.

Requesting an adjournment may be appropriate, e.g. where a community mental health facility is preparing a treatment plan as a less restrictive alternative.

Whatever the outcome of the inquiry, the consumer will undoubtedly need someone to talk to about the process. Consideration should be given to enabling some kind of 'debriefing' to occur, preferably with someone outside the official framework of the mental health facility, such as a friend, a consumer worker, or an official visitor.

Section 9

Other Functions of the Mental Health Review Tribunal

The Mental Health Review Tribunal is a specialist quasi-judicial body. It has a wide range of powers that enable it to make and review orders, as well as hear appeals about the treatment and care of consumers with a mental illness. The decisions made by the Tribunal are legally binding on the mental health facility and the individual.

The Tribunal produces an Annual Report that includes details about the numbers of people taken to and detained in hospitals, and the kinds of orders made. These reports provide the best source of information about involuntary treatment under the Mental Health Act in NSW.

Mental Health Review Tribunal

(02) 9816 5955,

Toll free: 1800 815 511

www.mhrt.nsw.gov.au

9.1 How are hearings conducted?

The Tribunal travels to hospitals and community health centres to conduct many of its hearings. However, those involving consumers in rural and remote communities are generally conducted by telephone or video.

9.2 Who sits on the Tribunal?

The Tribunal generally sits as a panel of three (unless it is conducting a mental health inquiry when the legal member sits alone).

Each panel comprises:

- a barrister or solicitor (who chairs the panel)
- a psychiatrist

- a suitably qualified person (a consumer, carer or person with other extensive experience in mental health).

The Mental Health Regulation sets out when the Tribunal must sit as a panel of three. These situations include:

- reviews of involuntary patients
- annual reviews of voluntary patients
- appeals against refusal to discharge
- applications for community treatment orders
- applications for electro convulsive therapy, surgical operations and special medical treatment.

The Tribunal may also sit as a one person panel when handling certain routine matters such as an uncontested variation of a community treatment order.

9.3 Applying in a timely fashion

It is extremely important to apply to the Tribunal for a hearing wherever possible in a timely fashion. This allows Tribunal staff:

- to ensure that a time is available for the hearing
- to check that all the necessary paperwork for the hearing has been prepared.

The Tribunal generally asks that applications be faxed to it at least five working days before the proposed hearing date. Where an application is urgent, it should be faxed to the Tribunal and then followed up by phone call to a Senior Registry Officer.

9.4 Preparing for the hearing

The main clinician involved with the consumer (usually the psychiatric registrar or psychiatric case manager) should:

- organise and prepare reports and necessary documentation
- explain the hearing process to the consumer

- inform the consumer's primary carer, relatives and other key people of the hearing and encourage them to attend
- organise an interpreter where appropriate
- organise appropriate security if necessary
- arrange legal representation if necessary
- facilitate the legal representative's access to relevant reports and documents.

9.5 Reports and documents

The Tribunal needs to see the following reports and documents before the hearing:

- hearing application form
- copy of any existing order, e.g. involuntary patient order, previous community treatment order, report(s) from treating psychiatrist, psychiatric registrar, case manager
- additional reports, e.g. social worker, occupational therapist etc
- copy of recent progress notes.

If the hearing is not face-to-face, these documents should be faxed to the Tribunal at least three working days before the hearing.

9.6 Preparing reports for the Tribunal

Psychiatric registrars, consultant psychiatrists, social workers and case managers are often required to provide written reports to the Tribunal. In each case, the report should be written in plain English and address the relevant legal criteria. For example, the Tribunal cannot grant an involuntary patient order unless:

- the consumer is still a mentally ill person as defined by the Act, and
- the order being requested can be demonstrated to be the least restrictive alternative consistent with safe and effective care and treatment.

Reports should be prepared on letterhead, dated, signed and clearly set out the following information:

- consumer's name, address and date of birth
- author's name, position, and relationship to the consumer
- diagnosis/ current symptoms
- relevant treatment history
- kind of order requested
- proposed duration of order requested, where applicable
- treatment plan or options
- consumer's attitude to and response to treatment
- any relevant behavioural issues.

9.7 Answering questions at the hearing

While a report provides the Tribunal with important information, panel members will be interested in asking questions that:

- clarify or expand on matters contained in the report
- explore alternative treatment options where appropriate
- build a comprehensive picture of the consumer's individual circumstances
- ensure that the legal criteria have been met.

9.8 Assisting a consumer to prepare for a hearing

This is as important as the formal preparation of reports and documentation. The involvement of interpreters, cross-cultural consultants and Aboriginal mental health workers should also be considered at this stage (Guide Book Section 15).

Consumers should be provided with:

- a clear explanation of their rights
- a clear explanation of the nature of the hearing including:
 - where it will be held
 - who will be there
 - the kinds of questions they are likely to be asked
 - the kinds of matters they might like to raise
 - the kind of decision the Tribunal can make
- an opportunity to ask questions about the process

- a private and appropriate space for those who have been admitted to an inpatient mental health facility to discuss the matter with a friend, advocate or legal representative.

Consumers should be:

- encouraged to attend and put their point of view
- encouraged to participate by telephone if they do not wish to attend the hearing
- encouraged to have their primary carer, or a support person/advocate go with them, particularly in those matters where legal representation is not available.

9.9 What to do after the hearing

Take time to explain to the consumer and /or friends and family any aspects of the process they may have found confusing.

9.10 What does the Tribunal deal with?

The Mental Health Review Tribunal has developed a detailed Civil Hearing Kit to assist doctors, case managers and others in making an application to the Tribunal. The Kit sets out the legislative requirements of the Mental Health Act and describes the paperwork needed when submitting an application. The Kit is available at www.mhrt.nsw.gov.au (under Civil Patients) and should be referred to whenever an application is being made.

The following information highlights some of the main areas covered in the Tribunal's Kit.

Involuntary patient orders (s37)

If a mental health facility wishes to extend a patient's involuntary stay beyond the detention period set at the mental health inquiry, then it must apply for an involuntary patient order before that initial order expires. Applications to review a patient's involuntary detention should be faxed to the Tribunal at least five working days before the requested date for the hearing.

The Tribunal then decides whether or not the patient is a mentally ill person for whom no other safe and effective care of a less restrictive kind is appropriate and reasonably available (Guide Book Section 2.1).

Where a further order is made, it must be reviewed:

- at least every three months during the first 12 months
- at least every six months thereafter.

The Tribunal may review involuntary patients more frequently than the three and six monthly periods stipulated in the Act.

The Act also allows for the possibility that an involuntary patient be reviewed at intervals of up to 12 months where they have been detained for over a year (s37(4)). However, this is only likely to be applied in limited circumstances, e.g. where the patient has a chronic illness, finds the Tribunal process stressful, and there is little prospect of significant improvement.

Where a further involuntary patient order is made by the Tribunal, it does not automatically end after a fixed period of time. It continues until the patient no longer qualifies as a mentally ill person and is discharged either by an authorised medical officer or by the Tribunal at a subsequent hearing. However, where a date for a subsequent review has been stipulated by the Tribunal, and the mental health facility believes the patient requires further inpatient treatment, a further hearing should be arranged before that review date.

! Involuntary patient orders

Under the previous Mental Health Act, mental health facilities applied for a Temporary Patient Order of specific duration up to three months. However, the Tribunal no longer makes fixed term involuntary patient orders, but only sets down a review period (usually three months). In some cases, mental health facilities continue to apply for orders of a specific duration, for example six weeks. This can lead to patient confusion and distress at the hearing

particularly where the patient has agreed to stay in the mental health facility for this period. It is important for mental health facility staff to explain that the Tribunal's order establishes a review period only, and this does not prevent the mental health facility from deciding when the patient is ready to be discharged.

Where the Tribunal decides that the patient is no longer a 'mentally ill person' it:

- must discharge the patient
- may defer the discharge for up to 14 days in the patient's best interests
- may make a community treatment order.

Appeals against refusal to discharge (s44)

Any consumer who has been detained as either a 'mentally ill person' or a 'mentally disordered person' can apply to an authorised medical officer to be discharged.

This includes a consumer who is:

- on an involuntary patient order
- on a mental health inquiry adjournment
- detained, but has not yet been reviewed at a mental health inquiry.

The consumer's primary carer, or another person appointed by them, can also apply to an authorised medical officer for the consumer to be discharged. The application can be either verbal or in writing. Once the request has been made, the authorised medical officer has three working days to respond.

If the application is refused or no decision is made within the three working days then an appeal can be lodged by the consumer, the person who applied for the consumer's discharge, or a person appointed by the consumer. While the appeal can be made either verbally (by declaring to the medical superintendent that the consumer wishes to appeal to the Tribunal) or in writing, consumers are encouraged to complete an appeal form.

The Tribunal considers whether the consumer fits within the definition of either a 'mentally ill person' or 'mentally disordered person' and may decide to:

- discharge the consumer
- dismiss the appeal
- reclassify the consumer as a voluntary patient
- adjourn the hearing.

The Tribunal may also decide that no further right of appeal may be exercised until the consumer's involuntary status is next reviewed by the Tribunal.

Voluntary patient reviews

(Guide Book Section 5)

Community Treatment Orders

(Guide Book Section 10)

Consent to Electro Convulsive Therapy

(Guide Book Section 11)

Financial Management Orders

(Guide Book Section 12)

Consent to Surgical or Special Medical Treatment

(Guide Book Section 13)

9.11 Other Processes of Review

Supreme Court

Decisions of the Mental Health Review Tribunal can be appealed to the Supreme Court. The Court may also require the medical superintendent of a mental health facility to bring a consumer before it for examination. It may discharge the consumer where it decides they are not a 'mentally ill' person. Due to the costs involved, very few people appeal to the Supreme Court. Where someone is considering an appeal they should contact the Mental Health Advocacy Service to see whether legal aid is available.

Other Bodies

The following can also play a role in scrutinising the treatment of consumers under the Mental Health Act (Guide Book Section 3.3):

- Official visitors
- Mental Health Advocacy Service
- NSW Health Care Complaints Commission
- Consumer workers

Section 10

Community Treatment Orders

Community treatment orders provide a community-based alternative to involuntary inpatient treatment. They are intended to allow consumers, who might otherwise be detained in an inpatient unit, to live in the community and receive the treatment, care and support they need in a less restrictive setting.

10.1 What is a Community Treatment Order (CTO)? (s51)

A CTO is a legal order made by the Mental Health Review Tribunal. It sets out the terms under which a consumer must accept medication, therapy, counseling, management, rehabilitation and other services. It is implemented by a community mental health facility that has developed an appropriate and individual treatment plan for a consumer.

A CTO authorises compulsory care and treatment for a consumer living in the community. If they do not comply with their order, the consumer can be taken to a declared mental health facility and given appropriate treatment, including medication.

10.2 Who can apply for a CTO? (s51(2))

The following people can apply for a CTO:

- an authorised medical officer of a mental health facility in which a consumer is detained or is a patient
- a medical practitioner who is familiar with a person's clinical history*
- a person's primary carer*
- a director of a community mental health facility who is familiar with a person's clinical history.

* While the Act enables a medical practitioner or primary carer to apply for a CTO, these applications need to occur in collaboration with the local community mental health facility that is responsible for drawing up and administering a treatment plan.

10.3 Applying for a CTO

Where a consumer is being detained involuntarily in a mental health facility and a CTO is sought at a mental health inquiry, a treatment plan must be prepared by an appropriate community mental health facility and the consumer provided with a copy of the application and the proposed plan.

Where the consumer is detained in a mental health facility on an involuntary patient order, or is in the community, and a CTO is sought, the standard application form should be used.

The application should be faxed to the Mental Health Review Tribunal so that a hearing time can be allocated and the necessary information sent to the consumer to inform them of the hearing.

Making an application for a further CTO

It is important for community mental health staff to know when a consumer's CTO is due to expire. The Tribunal prefers applications for second or subsequent CTOs to be faxed to the Tribunal at least three weeks before the requested hearing date.

This allows sufficient time for the Tribunal to write to the consumer with the details of the hearing, and also gives the community team time to ensure that:

- the consumer is reviewed by a psychiatrist
- the new treatment plan is discussed with the consumer
- a report into the efficacy of the previous CTO is prepared.

Making an application from the community

An application for a CTO can be made when:

- a consumer's CTO has expired
- they have never been detained as an involuntary patient.

When such an application is made, it is important to ensure that a clear picture of the consumer's circumstances is presented to the Mental Health Review Tribunal. This includes:

- discharge summary (where relevant)
- psychiatric report (e.g. where consumer has been managed by private psychiatrist or voluntarily by a community mental health team)
- doctor's report (e.g. where consumer has been managed by a GP)
- psychiatric history (e.g. gathered from the consumer and/or family members).

10.4 Providing notice of a CTO application (s52)

The applicant for a CTO must:

- notify the person of the application in writing
- include a copy of the proposed treatment plan with the application
- provide 14 days notice of the application where the person is in the community (i.e. when they are not detained in a mental health facility).

Where a consumer is:

- already on a CTO that has not expired, the 14-day notice provisions do not apply but reasonable notice must still be given (s52)
- in an inpatient mental health facility, they must be notified in writing of the application and the proposed treatment plan although the 14-day provision does not apply.

Where the 14-day notice provisions do not apply, a consumer should be given a copy of the proposed treatment plan with sufficient time to allow them to prepare for the hearing and to seek legal or other assistance if they wish. It is important that the consumer has the opportunity to discuss the purpose of the CTO and the specifics of the treatment plan with their case manager and/or legal representative wherever possible.

Notice can only be given in the following ways (s192):

- in person
- sending it by post
- by fax.

! The notice requirements are not met by:

- *putting the application under the consumer's door, or*
- *leaving the application in the consumer's mailbox.*

10.5 When can a CTO be made?

The Mental Health Review Tribunal can make a CTO at a mental health inquiry where:

- a consumer is found to be 'mentally ill person', and
- the order is seen as the least restrictive alternative consistent with safe and effective care.

The Tribunal as a three person panel can make a CTO:

- where the consumer is on an involuntary patient order
- where the consumer is appealing against the authorised medical officer's refusal to discharge
- on an application where the consumer is on a CTO that is about to expire
- on an application from the community by a person who is legally authorised to do so.

What is considered before making a CTO? (s53)

The Mental Health Review Tribunal considers the following issues in reaching their decision on whether or not to grant a CTO:

- Has an appropriate treatment plan been drawn up by the community mental health facility?
- Will the consumer benefit from a CTO as the least restrictive alternative consistent with safe and effective care?
- Is the community mental health facility capable of implementing the plan?
- Does the consumer have a prior diagnosis of a mental illness, and if so, is there a previous history of refusing to accept appropriate treatment? *

* This issue does not arise when a consumer has been subject to a CTO in the previous 12 months. In these cases the Tribunal considers whether the consumer is likely to relapse into an active phase of mental illness if the order is not granted.

In all other cases when deciding whether there is a previous history of refusing to accept appropriate treatment, the following factors are considered (s53(5)):

- If appropriate treatment has been refused, has this led to a relapse into an active phase of mental illness?
- Has any such relapse been followed by mental or physical deterioration justifying involuntary admission (whether or not there has been such an admission)?
- Did the care or treatment in an inpatient mental health facility result in, or could have resulted in, an improvement in or recovery from the symptoms of mental illness?

If a consumer has a prior diagnosis of mental illness but no history of refusing to accept proper treatment for it, then a CTO cannot be made.

Where a consumer has been subject to a previous CTO, the Tribunal also considers a report from the psychiatric case manager outlining the efficacy of the previous order.

10.6 The treatment plan

This sets out how a consumer is to be managed while on a CTO and:

- is usually prepared by the consumer's psychiatric case manager
- must be presented to the Mental Health Review Tribunal for approval.

What should be in a treatment plan? (s54)

Treatment plans should contain:

- in general terms, an outline of the proposed treatment, counselling, management, rehabilitation and other services to be provided

- in specific terms, the method by which, the frequency with which, and the place at which, the services will be provided.

The Mental Health Review Tribunal has prepared Treatment Plan Guidelines and a Treatment Plan Template to assist in the preparation of these plans. They set out the issues to be addressed under the following headings:

- goals of treatment for the consumer
- obligations on the consumer to make contact with the treating team: including time, place and frequency of contact required with the case manager and treating doctor
- obligations on the consumer to accept treatment, including a list of current medication(s)
- obligations on the consumer to accept rehabilitation or other services (where relevant)
- obligations on the community mental health facility.

! Medications listed on a treatment plan

Generally, only medications that directly relate to the management of a consumer's mental illness appear on a treatment plan. However, where a consumer's mental wellbeing is significantly and adversely affected by their failure to take other medication on a regular basis, these can be included.

All treatment plans should be:

- specifically tailored to the needs of the individual consumer
- written in plain English (i.e. no Latin terms such as mane and nocte)
- discussed with the consumer prior to the hearing.

10.7 The length of a CTO

While the Mental Health Review Tribunal can make a CTO for up to 12 months, the Act provides for an automatic right of appeal where a CTO is made for longer than 6 months, or no duration is specified (s67). Therefore, most orders will continue to be for 6 months.

In deciding the duration of a CTO, the Tribunal must take into the account the estimated time required to:

- stabilise the consumer's condition, and
- establish, or re-establish a therapeutic relationship between the consumer and their case manager (s53(7)).

Where a longer order is requested, the applicant will need to explain their reasons to the Tribunal and give a clear indication of what they hope to achieve during this longer period.

Some of the factors that may be considered in granting a longer CTO include:

- where the consumer has a lengthy history of mental illness with repeat admissions to inpatient mental health facilities
- where the consumer's condition and treatment has not changed for a long time
- where the consumer themselves requests a longer order
- where the consumer is agreeable to a longer order and is involved in the hearing
- where the consumer has recently been diagnosed with a mental illness, and their youth and/or the severity of the illness, makes it important that they have an initial extended and consistent period of treatment.

It is unlikely that a longer order would be granted where:

- the consumer has not been consulted about the length of the order
- the consumer's treatment is in a state of flux
- the consumer is opposed to a longer order
- the consumer is absent from the hearing.

! Negotiation

Resentment and resistance to CTOs can be minimised by consulting and negotiating with consumers and where possible working towards the consumer's goals.

10.8 Preparing for and attending CTO hearings

What should be in the applicant's report?

A dated and signed report should be prepared on letterhead outlining:

- the name and date of birth of the consumer
- the name of the psychiatric case manager
- the declared name of the community mental health facility
- the type of order previously made
- when that order was made
- the duration of that order.

It should also contain:

- a summary of the previous treatment plan and whether any changes to that plan have occurred or are proposed
- how that plan was implemented and any difficulties encountered or gains made during the last order
- why a further order is sought.

It is the role of the Mental Health Review Tribunal to ensure that the provisions of the Mental Health Act have been complied with. They will therefore ask questions that relate to the legal criteria for CTOs, particularly where these issues are not apparent in the accompanying reports.

It is therefore important for the person requesting the CTO to have a good understanding of the consumer and their situation.

The authorised medical officer or case manager should be prepared to answer questions about:

- the consumer's attitude toward the previous or proposed treatment plan
- the consumer's history of compliance with aspects of the plan (including the consequences of compliance/non-compliance)
- any rehabilitation, training, or social activities that the consumer has been involved in or is working towards

- the consumer's interactions with family, friends, and others
- relevant accommodation, employment, legal and mobility issues.

Where an application for a CTO is being heard in relation to a consumer who is in an inpatient unit, it is important for the nominated case manager to participate in the hearing so that they can answer questions about the proposed treatment plan. If the case manager is unable to attend, their participation by phone should be arranged.

10.9 Adjourning a CTO application

While the Mental Health Review Tribunal has a general power to adjourn hearings, an adjournment cannot be used to extend the operation of a CTO. To ensure the continuity of a consumer's care, it is therefore important to comply with all of the requirements of a CTO application so that a scheduled Tribunal hearing can proceed. Where this does not occur, a consumer's order may expire and a new application may need to be made.

10.10 Varying or revoking a CTO (s65)

Where there has been a significant change in a consumer's circumstances surrounding the making of a CTO, or where relevant information not previously available becomes available, an order can be varied.

This most commonly occurs when:

- the consumer moves to a different area
- there is a significant change in the consumer's treatment plan (e.g. where the consumer's medication is changed to clozapine which requires regular blood tests).

In most cases, an application for a variation is made to the Mental Health Review Tribunal by the consumer's case manager, though it can also be made by any of those who can apply for a CTO (Guide Book Section 10.2), or the consumer. These matters are usually dealt with on the papers and do not require a formal hearing.

The Tribunal can also revoke a CTO where there has been a significant change in the consumer's circumstances, or where relevant information that was not available when the order was made becomes available. In these cases, however, a hearing would be conducted.

A CTO can also be revoked by the director of treatment of the community mental health facility that is providing case management for the consumer, where they believe the consumer is not likely to benefit from the continuation of the order (s66).

10.11 Appealing against a CTO (s67)

There is a broad right of appeal to a three member Mental Health Review Tribunal panel where a CTO has been made at a mental health inquiry. A consumer may appeal:

- against the length of the order where it is more than 6 months, or no duration has been specified, or
- on any question of law or fact arising from the order or its making.

Where the CTO is made by a three member Tribunal panel, the same grounds for appeal apply. However, in this case the appeal is to the Supreme Court. Anyone wishing to appeal should contact the Mental Health Advocacy Service (Guide Book Section 3.3)

10.12 Breaching a consumer on a CTO (s58)

This may happen when a consumer refuses or fails to comply with a CTO. However, before a breach can be said to have occurred, a clinical decision must be made. A consumer's failure to comply with the terms of the order does not, of itself, automatically trigger breach proceedings.

The director of treatment at the community mental health facility must:

- consider whether the facility has taken all reasonable steps to implement the order, and
- assess whether there is a significant risk of deterioration in the mental or physical condition of the consumer, and

- make a written record of their opinions, the facts upon which they are based, and the reasons for forming them.

! Breach process.

The breach process commences and continues at the discretion of the director of community treatment of the community mental health facility supervising the CTO.

The first warning - verbal

If the director of community treatment decides that all reasonable steps have been taken by the community mental health facility to implement the CTO, and that there is a significant risk of deterioration, the case manager will then give the consumer a warning that continued failure to comply with their CTO may result in them being taken to a mental health facility and treated.

The second warning – issuing a breach notice

If the consumer still fails to comply, the director of community treatment may give them a written breach notice:

- requiring the consumer to accompany a member of staff to the community mental health facility or other specific mental health facility for treatment in accordance with the order, and
- warning them that police assistance may be obtained to ensure compliance.

Generally the consumer would be given a further opportunity to comply following this second warning before the breach notice is delivered. However, a clinical decision would need to be made about the rate and consequences of the consumer's deterioration.

Where the consumer agrees

If the consumer agrees to come to the mental health facility, they may be:

- given treatment in accordance with the CTO, and
- assessed for involuntary admission to an inpatient facility if appropriate.

If treatment is accepted, the consumer may then return home.

Where the consumer refuses – issuing a breach order

Where the consumer refuses to comply with a breach notice, the director of community treatment may:

- issue a breach order authorising the consumer to be taken to a specified mental health facility (either community or inpatient) against their will.

Once a breach order has been issued, the consumer can be taken to the specified mental health facility. Once at the facility:

- if the consumer consents, the consumer can be given treatment in accordance with the CTO. Once treatment has been given, the consumer can return home but consideration should also be given to assessing the consumer for involuntary admission (ie assessing the consumer to determine whether a Schedule should be issued); or
- if the consumer refuses treatment, the consumer may be dealt with at the facility (if the facility is an in-patient unit) or transferred to another facility (if the facility is a community mental health facility).

Involving the police (s59)

If a mental health worker cannot implement a breach order, it may be given to the police. They:

- must, if practicable, apprehend and take or assist in taking the consumer to the appropriate mental health facility
- may use reasonable force to enter premises, apprehend the consumer, and transport them to the appropriate mental health facility (Guide Book Section 14).

Detention in an inpatient mental health facility following a breach order (s61)

Where a consumer refuses treatment at a community mental health facility, they will generally be taken to an inpatient mental health facility. If treatment is accepted at this stage, they may return home if deemed appropriate by the

authorised medical officer after assessing the consumer for involuntary admission.

If treatment is refused, the authorised medical officer can cause the consumer to be given treatment in accordance with the CTO. In addition, the consumer must be reviewed by the authorised medical officer within 12 hours to determine if the consumer is a mentally ill person or a mentally disordered person for whom no other care of a less restrictive kind, consistent with safe and effective care, is appropriate or reasonably available.

If they are found to be either 'mentally ill' or 'mentally disordered', they can then be detained for further observation and/or treatment. When a consumer is detained following a CTO breach, they must be given a Statement of Rights as soon as possible.

In the case of a mentally disordered person, they can only be detained for the maximum period allowed under s31 or until the expiry of the CTO (whichever occurs first) (Guide Book Section 6.4). A mentally ill person, on the other hand, can be detained for the remainder of their CTO, although they must be reviewed by the Mental Health Review Tribunal at least every three months.

If the Tribunal finds at the review that the consumer is still mentally ill, it may continue their detention:

- until the end of the CTO, or
- as an involuntary patient under an involuntary patient order.

Where the Tribunal decides to continue a consumer's detention following the breach of a CTO, the authorised medical officer must give the consumer a statement of their appeal rights.

If the Tribunal finds at the review that the consumer is no longer mentally ill or that they can be cared for in a less restrictive environment it may:

- discharge the consumer

- discharge the consumer on the same or a varied CTO
- defer the consumer's discharge for up to 14 days in the consumer's best interests.

The consumer must, of course, be discharged at any time the authorised medical officer decides they are no longer a mentally ill person or mentally disordered person.

Where discharge occurs before the original CTO has expired, the CTO continues to operate

Breach of Community Treatment Order (s 58)

Breach action may be instigated when a consumer fails or refuses to comply with the CTO **AND** the Director of Community Treatment believes that there is a significant risk of deterioration, **AND** the Mental Health Facility (MHF) has taken all reasonable steps to implement the order. The Director must document all of the above.

FIRST WARNING— verbal

The consumer is informed of the consequences of non-compliance i.e may be taken to a Declared MHF.

If the consumer continues to refuse treatment

SECOND WARNING—Written breach notice

The consumer is required to attend a declared MHF ; they are warned that the police may be called to assist.

If the consumer further refuses

WRITTEN BREACH ORDER

The Director issues a breach order

OPTION 1:

Consumer taken to community MHF and given treatment. Assessed by a medical practitioner for involuntary admission

Schedule 1 if appropriate and transport to a declared MHF

Follow the 5 steps in Section 27

CTO has no effect whilst the consumer is detained in the MHF but if the consumer is discharged, the CTO continues.

OPTION 2:

The consumer given treatment according to their CTO, and may go home after accepting treatment

OPTION 3:

Consumer taken to inpatient unit. If treatment refused AMO must examine the person within 12 hours of admission

Treatment may be given according to their CTO

The consumer may be detained as a mentally ill or mentally disordered person

The consumer goes home after receiving treatment

Mentally ill AND the order has more than 3 months to run, the Tribunal will review under section 63.

Mentally disordered consumer detained in hospital as per the limitations imposed by Section 31

If the consumer is NOT mentally ill or if less restrictive care is appropriate, there are 3 options:

1. Discharge

2. Defer discharge for up to 14 days

3. Make a new CTO

If the Tribunal finds the consumer mentally ill **and** there is no less restrictive care available, they may be detained until end of the CTO

If the AMO decides that the consumer is still mentally ill at the end of the CTO they are taken to be detained under section 19.

Follow the 5 steps in Section 27

! Effect of scheduling a consumer on a CTO

As with a consumer detained on a breach of a CTO, during a period of involuntary detention a CTO is suspended, but continues once the consumer is discharged. For example, Mary is on a CTO that expires on September 14th. Although compliant with her CTO, she has become unwell due to the death of a good friend. She was scheduled in June and subsequently placed on a 6-week involuntary patient order. By mid July she is well enough to be discharged and returns home.

While Mary's CTO does not apply while she is in an inpatient mental health facility, her CTO continues to run until September 14th. This means that Mary, her case manager and community psychiatrist have the time to assess whether a further CTO is necessary and make the necessary application if appropriate.

10.13 Effectiveness of Community Orders

Compulsory community treatment is now a major tool for the treatment and control of mental illness, and the review of these orders provides the Mental Health Review Tribunal with its major workload. Research suggests that these orders have had a positive impact upon inpatient mental health facility readmission rates and compliance with medication. However, less is known about the impact of compulsory community treatment on the consumer's psychosocial functioning, quality of life, perceived distress and rehabilitation outcomes.

Studies into the use of coercive community orders suggest that the consumer perceptions of the following factors play an important part in determining their effectiveness:

- motivation – did the consumer see concern for their particular situation as the motivation behind the treatment order?
- respect – how respected did the consumer feel during the process?
- being heard – did the consumer feel that they had an opportunity to express their opinion?

- validation – did the consumer believe they were taken seriously?
- fairness – did the consumer believe they were treated fairly or that decisions were taken behind their backs?
- persuasion or threats – what sort of pressure did the consumer feel was applied in their case?

Many CTO renewal applications occur without the consumer's participation, representation or advocacy of any sort. Wherever possible, the consumer's participation at these hearings should be encouraged.

10.14 Interstate CTOs

The Mental Health Act makes some provision for implementing and recognising interstate CTOs.

The following provisions apply:

- a CTO may be made for a consumer who does not reside in NSW if the mental health facility implementing the order is located in NSW (s181)
- a consumer who is subject to a NSW CTO may have that order implemented by a mental health facility in another state (s182)
- a NSW mental health facility may implement a CTO made in another state providing it is permitted to do so by that state's legislation (s183). (At the time of publication, legislation in other states does not permit this in practice.)

NSW has also entered into Ministerial Agreements relating to the treatment, care and transfer of civil and forensic mental health patients with Victoria, Queensland, South Australia and the Australian Capital Territory. These agreements and accompanying operational guidelines are available via the NSW Health website at www.health.nsw.gov.au/aboutus/legal/agreements.asp

For further information about CTOs see Section 4 of the Mental Health Review Tribunal Hearing Kit: www.mhrt.nsw.gov.au (under Civil Patients)

Section 11

Consent to Electro Convulsive Therapy

Electro convulsive therapy (ECT) is a treatment that involves passing a small electrical current through the brain. It is most commonly used in the treatment of severe depression, where medication is not an appropriate option or has not been effective. ECT can only be administered in a mental health facility or a place that has been approved by the Director-General. The Mental Health Act establishes a strict set of guidelines for its use in all cases.

11.1 Who can administer ECT? (s88)

At least two doctors must be present:

- one experienced in administering ECT, and
- one experienced in administering anaesthesia.

11.2 Voluntary patients

ECT may be given to a voluntary patient once their informed and freely given written consent has been obtained.

The Act sets out a number of conditions that must be met for informed consent to be obtained (s91). These include providing the patient with:

- a fair explanation of the procedure
- a full description of the possible discomforts and risks, including possible loss of memory
- a full description of the expected benefits
- information about alternative treatments
- a reply to the patient's questions about the procedure in terms they appear to have understood
- a full disclosure of any financial relationship between the person proposing the treatment and those administering the treatment
- notice of the right to obtain legal and medical advice and to be represented before giving consent

- notice of the right to withdraw consent and discontinue the treatment at any time (Form 6, Appendix 1).

A voluntary patient will be presumed to be incapable of giving informed consent if their ability to consent is significantly impaired by medication (s92).

As well as a patient's informed consent, ECT also requires two doctors (one of whom must be a psychiatrist) to confirm in writing that they have considered the patient's clinical condition, their history of treatment and any appropriate alternative treatments and formed the opinion that:

- ECT is a reasonable and proper treatment in all the circumstances, and
- it is necessary or desirable for the patient's safety or welfare (s93).

It is only where an authorised medical officer is unsure whether a voluntary patient is capable of giving informed consent that they need apply to the Mental Health Review Tribunal. Where such an application is made, reasonably practicable steps must be taken to inform the patient's primary carer.

In these cases, the Tribunal's only role is to decide whether or not the patient is capable of giving informed consent and whether or not they have actually given that consent (s96(1)).

Where the Tribunal decides that the patient lacks capacity, or has refused treatment, the mental health facility may not administer ECT while the patient remains a voluntary patient.

! ECT and voluntary patients

Voluntary patients cannot be given ECT without their informed consent. If the voluntary patient lacks the capacity to consent, no other person may consent on their behalf. For example, parents cannot consent on behalf of a child who lacks the capacity to consent, or refuses to give their informed consent.

11.3 Involuntary patients and persons detained in a mental health facility

Where two doctors (one of whom must be a psychiatrist) confirm in writing that:

- the treatment is reasonable and proper in all the circumstances, and
- it is necessary or desirable for the consumer's safety or welfare (s94)

then an authorised medical officer may apply to the Mental Health Review Tribunal for permission to administer ECT to an involuntary patient or other person detained in a mental health facility.

An application for ECT can be made where:

- a consumer has been detained in a mental health unit as an assessable person (the initial detention documentation and two Form 1s are required)
- a consumer is subject to an adjournment made at a mental health inquiry
- a consumer is subject to an involuntary patient order made by the Tribunal.

! ECT application where the consumer is in a health facility

On occasions, an involuntary patient or other detained person for whom an application for ECT is being made may require and be receiving care in a general health facility. In these cases, where the consumer has not been reviewed at a mental health inquiry, the application for ECT should be accompanied by the initial detention documentation, two Form 1s and the relevant transfer document under s80.

Where an application for ECT is proposed, the authorised medical officer must take all reasonably practicable steps to notify the consumer's primary carer (s78).

11.4 The Mental Health Review Tribunal's role

The Mental Health Review Tribunal must:

- hold an inquiry into whether ECT should be granted as soon as practicable (s95)
- find out from the consumer whether they were aware of the authorised medical officer's obligation to provide notice of the Tribunal hearing to their primary carer and whether that notice has been given
- inform the consumer about the purpose and possible outcome of the hearing
- ask about the consumer's medication and take into account its effect on their ability to communicate
- consider the views of the consumer as well as the medical evidence (s96(6)).

ECT can be administered where the Tribunal decides:

- the consumer is capable of giving informed consent and has given their consent or
- there is no informed consent, but the treatment is reasonable and proper and is necessary or desirable for the safety or welfare of the consumer (s96(3)).

Maximum number of treatments

When the Tribunal makes an order for ECT, it must specify a maximum number of treatments. In most cases this will not exceed 12 (s96(4) & (5)). However, in special circumstances, including where there has been a previously successful course of ECT, the Tribunal may approve a greater number.

Where additional treatments are sought, the doctor presenting the case would need to clearly outline the reasons for that request. Once the 12 treatments have been given a fresh application can be made to the Tribunal for further treatments.

Duration of an order for ECT

An order for ECT made by the Tribunal has effect for 6 months from the date of the hearing unless a shorter period is specified or until the consumer ceases to be an involuntary or detained patient.

! ECT and Involuntary Patients and other persons detained under the Act

All ECT for involuntary patients and other detained persons requires prior authorisation by the Tribunal.

11.5 ECT Register

Each mental health facility, whether public or private, must keep a register that documents each administration of treatment (s97). The information to be recorded is set out in the Mental Health Regulations. It includes:

- date of treatment
- consumer details
- names of medical personnel in attendance
- duration of the treatment, etc.

ECT Registers can be obtained from the Mental Health Drug and Alcohol Office (MHDAO) (02) 9391 9307

For further information see Section 6 of the Mental Health Review Tribunal Hearing Kit: www.mhrt.nsw.gov.au (under Civil Patients)

Section 12

Guardianship, Financial Management and the Mental Health Act

There are circumstances in which mental health workers will need to take into account both the Mental Health Act and the Guardianship Act. These two pieces of legislation have been designed to be complementary and a guardianship order can coexist with an order made under the Mental Health Act. However, the Mental Health Act takes precedence where there is an inconsistency.

Decisions about involuntary patients and assessable persons are made under the Mental Health Act. However, where an involuntary patient or assessable person is already under a guardianship order, a copy of the order should be obtained from the consumer's guardian. This will make it easier to keep the guardian appropriately informed about the consumer's care and treatment and enable them to work with mental health staff in organising support services and accommodation in readiness for discharge. Where a guardian has been appointed, they are also the primary carer under the Mental Health Act (Guide Book Section 4).

Where a voluntary patient is admitted and already has a guardian, then the guardian can give consent to medical treatment during the admission if the order gives them a medical consent function.

A consumer can also appoint their own guardian, called an enduring guardian. A copy of the appointment should be obtained from the enduring guardian. The enduring guardian should be consulted and informed about the consumer's care and treatment. Where an enduring guardian has been appointed, they are also the consumer's primary carer under the Mental Health Act.

12.1 What does the Guardianship Tribunal do?

The Guardianship Tribunal appoints guardians and financial managers for persons 16 years and over, who are incapable by reason of their disability (which may include mental illness as defined by the Mental Health Act), of making their own personal and financial decisions. It can also provide substitute consent to medical and dental treatment in situations where people are unable to consent for themselves.

Whereas the Mental Health Act requires consideration to be given to the risk both to an individual and to the community if care and treatment is not given, the focus of the Guardianship Act is exclusively on the welfare and interests of the person with the disability.

The Guardianship Tribunal can only make a guardianship order for a person if it is satisfied the person has a disability that makes them incapable of making their own decisions, and there is a need to appoint a guardian to make decisions. The guardian may be a private person or the Public Guardian.

The Guardianship Tribunal usually gives the guardian one or more powers (called 'functions') to make decisions in specified areas of a person's life, such as accommodation, services or health care.

Before making a guardianship order, the Guardianship Tribunal considers whether there are suitable informal arrangements that support the person with a disability. If so, there may be no need to make a guardianship order. (Further information about the Guardianship Tribunal: www.gt.nsw.gov.au)

12.2 Admission and discharge of a person under guardianship at a mental health facility

Involuntary admission

A consumer can only be involuntarily admitted to a mental health facility if the criteria laid down by the Mental Health Act are met. However, where a consumer is under guardianship or has an enduring guardian, a copy of the appointment or order should also be obtained. Guardians have an ongoing interest and involvement in the consumer's care and treatment, and should be kept informed of decisions particularly in relation to:

- transfers
- granting of leave of absence
- discharge.

Where a consumer is under guardianship, their guardian (including enduring guardian) is their primary carer under the Mental Health Act, and is therefore entitled to be notified of all relevant aspects of the consumer's care and treatment (Guide Book Section 4).

Voluntary admission

A consumer under guardianship may be admitted under s7(1) of the Mental Health Act as a voluntary patient at the request of their guardian (including their enduring guardian).

The mental health facility should obtain a copy of the enduring guardianship appointment or guardianship order, either from the guardian or the Guardianship Tribunal, so that they are aware of the scope of the guardian's authority. The guardian should have the authority or function to make decisions about where the consumer lives, or to request that they be admitted to a mental health facility as a voluntary patient.

There may also be occasions where a consumer is admitted as a voluntary patient in circumstances where the mental health facility is concerned that they are unable to give informed consent to their admission. If involuntary admission is inappropriate and the consumer does not have a guardian, the mental health facility should seek information from the Guardianship Tribunal about the process of applying for a guardian who can then request the consumer's admission as a voluntary patient.

Voluntary discharge

- A voluntary patient, whether under guardianship or not, may discharge themselves at any time (s8(2)).
- Notice of the discharge of an voluntary patient under guardianship must be given to the guardian (s8(3)).
- An authorised medical officer must discharge a consumer under guardianship who has been admitted as a voluntary patient if the consumer's guardian requests the discharge (s7(3)).
- Where the consumer seeking discharge is a 'mentally ill person' or a 'mentally disordered person' as defined in the Mental Health Act, the authorised medical officer may detain the consumer as an involuntary patient (s10).

12.3 Using guardianship in the area of mental health

Some people who fall outside the definitions of mentally ill or mentally disordered persons as defined by the Mental Health Act may nonetheless require care and treatment in a mental health facility. A person who does not meet these definitions can still be admitted as a voluntary patient on the request of their guardian. If the consumer does not have a guardian, or the guardian does not have the appropriate authority or function to request voluntary admission, then an application to the Guardianship Tribunal becomes particularly important.

The Guardianship Tribunal can make a guardianship order where a person has a disability and due to that disability the person is incapable of managing their affairs. A disability under the Guardianship Act can include:

- a mental illness within the meaning of the Mental Health Act, or
- an intellectual physical, psychological or sensory disability.

In these cases, an application to the Guardianship Tribunal is usually made by the person's treating doctor or a family member, but may be made by anyone whom the Tribunal is satisfied has a genuine concern for the welfare of the person.

Where the matter is urgent, a hearing may be arranged within a matter of days, but there must be sufficient time to allow for a proper investigation of the issues before the hearing takes place.

(For further information about making a guardianship application to the Guardianship Tribunal, see: www.gt.nsw.gov.au)

! Case study

Janine is a 56-year-old woman suffering from alcohol related brain damage who has had a stroke. She usually lives at home but has periods when she needs the care and supervision offered by the local mental health facility although she does not have a mental illness. Her daughter applies to the Guardianship Tribunal to be appointed as her guardian. The Tribunal appoints Janine's daughter as her guardian with accommodation and medical and dental consent functions. Janine's daughter requests the voluntary admission of her mother to the local mental health facility where she receives treatment and care on a short-term basis.

After a few days Janine wants to leave the mental health facility although both the treating team and Janine's guardian believe it would be beneficial for her to stay. As a voluntary patient, Janine can discharge herself at any time.

12.4 Consent to medical treatment

Involuntary patients

While a consumer is detained as a 'mentally ill person' or a 'mentally disordered person', an authorised medical officer can, in most cases, consent to any non-surgical mental health treatment (including any medication) the consumer needs, even if they object to it. Treatments such as electro convulsive therapy, however, require the consent of the Mental Health Review Tribunal (Guide Book Section 13 for further information on surgery and special medical treatment).

Voluntary patients

Under the Mental Health Act, a voluntary patient must consent to their own treatment. Voluntary patients, whether or not they are under guardianship, may still be capable of consenting to their own treatment.

However, where a voluntary patient is not capable of consenting to their own treatment, the provisions of the Guardianship Act apply. The Guardianship Act sets out who can consent to medical (or dental treatment) on behalf of a person who is over the age of 16. The rules differ depending on whether the treatment is being sought is an emergency or non urgent.

Non urgent Treatment

In the case of non urgent treatment:

- the patient's 'person responsible' or the Guardianship Tribunal can consent to treatment
- if the treatment is minor and if no 'person responsible' can be located, the doctor may treat without consent, provided the doctor (or dentist) certifies in writing on the patient's record that the treatment is necessary and will promote the patient's health and wellbeing and that the patient does not object
- only the Guardianship Tribunal can consent to special medical treatment (which includes sterilisation and abortion).

However, if the patient who is incapable of giving consent objects, then only the Guardianship Tribunal or a guardian with special authority can consent to treatment overriding those objections.

Emergency Treatment

In an emergency, treatment can be carried out without consent if the doctor (or dentist) considers the treatment is necessary, as a matter of urgency:

- to save the patient's life
- to prevent serious damage to the patient's health
- to prevent the patient from suffering or continuing to suffer significant pain or distress (except in the case of special treatment).

Identifying a 'person responsible'

A 'person responsible' is either:

- a person with parental responsibility for a child (under the age of 16);
- a guardian (including enduring guardian) who has been given the function of consenting to medical and dental treatments, or, if there is no guardian;
- a spouse or de facto spouse (including same sex partners) with whom the person has a close, continuing relationship, or, if there is no spouse or de facto spouse;
- an unpaid carer who was providing support to the person before their admission, or, if there is no carer;
- a relative or friend who has a close personal relationship with the person.

(Further information about 'person responsible' and the different categories of urgent, minor, major, special medical treatment see Guardianship Tribunal: www.gt.nsw.gov.au)

12.5 Financial management and the Guardianship Act

The area of financial management can be difficult for people with a mental illness. Under the Guardianship Act and the NSW Trustee and Guardian Act, a number of bodies can make orders for financial management including

Magistrates, the Supreme Court, the Guardianship Tribunal and the Mental Health Review Tribunal.

Under the Guardianship Act, the Guardianship Tribunal can:

- appoint a private person or the NSW Trustee as the financial manager
- make orders subject to a specified review period
- exclude part of the person's estate from management
- review its own order and replace a manager
- review its own order and revoke it on the grounds of the best interests of the person or regained capacity of the person.

This flexibility means that where financial management is an issue for a person with a mental illness, it may be better dealt with by the Guardianship Tribunal.

However, where an order has already been made by one of the other bodies, the Guardianship Tribunal cannot hear an application while that order is still in operation. However, once an order made by another body has expired or been revoked, an application can be made to the Guardianship Tribunal.

! Case study

John suffers from schizophrenia, and has been on a community treatment order for the last 18 months. While John has been taking his medication regularly, for the last 6 months he has been spending his pension on the day he receives it. This has made it very difficult for him to retain stable accommodation, which has in turn led to a marked deterioration in his condition. John's parents approached the Guardianship Tribunal for orders in relation to guardianship and financial management.

The Guardianship Tribunal did not believe that a guardianship order was necessary. However, they did make a financial management order that enables the NSW Trustee and Guardian to manage John's finances and pay his regular bills, such as rent and electricity. The order was made for a period

of two years and the Guardianship Tribunal will review it after that time to see if John still requires this assistance.

12.6 Financial management and the Mental Health Act

The Mental Health Review Tribunal can make financial management orders under the NSW Trustee and Guardian Act 2009. Such orders can only be made where a consumer is a patient in a mental health facility.

The general principles to be considered when applying this Act include (s39):

- giving paramount consideration to the welfare and interests of the person
- restricting the freedom of decision and action of the individual as little as possible
- encouraging the person to live a normal life in the community as far as possible
- considering the views of the person
- recognising the importance of preserving the person's family relationships and cultural and linguistic environment
- encouraging the person to be self reliant regarding their personal, domestic and financial affairs as far as possible, and
- ensuring that the person is protected from abuse, neglect and exploitation.

At a mental health inquiry, the Mental Health Review Tribunal must make a financial management order in relation to an involuntary patient where they decide that the consumer is not capable of managing their affairs (NSW Trustee and Guardianship Act s 44).

The Tribunal may also consider the issue of a patient's capacity to manage their affairs when an application is made by a person who has, in the opinion of the Tribunal, a sufficient interest in the matter.

The Tribunal may make a financial management order in relation to:

- a voluntary patient
- a consumer on an involuntary patient order

- an assessable person.

Who can apply for a financial management order?

Any person with a sufficient interest, such as staff of mental health facilities, case managers, family members or a person who might be affected by the decision, can apply to the Mental Health Review Tribunal asking them to consider the consumer's ability to manage their finances. In most cases, the applicant will be an authorised medical officer at the mental health facility where the consumer is a patient or detained person.

What does the Tribunal consider?

The Mental Health Review Tribunal must decide whether the consumer is capable of managing their own financial affairs. If they decide that the consumer is not capable of managing their own affairs, then an order will be made appointing the NSW Trustee as the consumer's financial manager. An order for financial management can be in relation to the whole or only part of the consumer's estate.

How long do these orders last?

The Mental Health Review Tribunal may make either:

- an order without a time limit that remains in place until it is formally revoked, or
- an interim order.

An interim order is made for a specific period of up to 6 months until the Tribunal can reconvene to determine the consumer's capability to manage their affairs. Where the order is not reviewed, or the review is not commenced prior to the expiry date, it is automatically revoked.

! Interim financial management orders

An interim order may be appropriate when there is an urgent need to protect a consumer's estate from being dissipated, or there is a risk of financial exploitation. These orders are generally made to enable the relevant evidence relating to the consumer's capability to manage their financial affairs to be gathered. Where an interim order is made, the Mental Health Review Tribunal

will set down a date at which this issue can be considered and a decision made. This subsequent hearing can, of course, only proceed if the consumer is still a patient (either voluntary or involuntary).

Preparing for the hearing

When notifying an assessable person of an upcoming mental health inquiry, an authorised medical officer is required to give the assessable person information about the Mental Health Review Tribunal's role in determining their capacity to manage their affairs.

The assessable person must be informed of:

- their right to be represented by a barrister or solicitor
- their right to appeal to the Supreme Court if the Tribunal decides that their affairs should be managed by the NSW Trustee and Guardian
- their right to ask the medical superintendent to arrange for the NSW Trustee and Guardian to manage their affairs if they so wish (Schedule 1 NSW Trustee and Guardian Regulation)

As there are significant implications for a consumer once a financial management order is made, it is important to have accurate and clearly documented evidence of the consumer's financial position.

Supporting documentation should be provided, including:

- details of the consumer's assets and liabilities
- copies of outstanding accounts,
- bank statements
- letters from creditors
- other financial papers.

All the reports in relation to applications for financial management orders must address the question as to whether or not the consumer is capable of managing their financial affairs.

Appeals against a financial management order

Appeals can be made to either the Supreme Court or the Administrative Decisions Tribunal. Where a consumer wishes to appeal, they should be referred to the Mental Health Advocacy Service for advice on how to lodge an appeal (Guide Book Section 3.3).

Revoking a Financial Management Order

The Mental Health Review Tribunal can revoke an order that has been made by itself.

The Tribunal can only revoke an order if:

- the consumer is no longer a patient (either voluntary or involuntary) under the Mental Health Act, and
- the Tribunal is satisfied that the consumer is now capable of managing his or her own financial affairs.

Only the consumer subject to the financial management order can apply to have it revoked.

! Case study

When Joan was in a mental health facility in 2007, a financial management order was made by the Mental Health Review Tribunal and the management of her affairs was taken over by the Office of the Protective Commissioner (now the NSW Trustee). While Joan is no longer a patient, her illness remains chronic and she requires a high level of care and support which is provided by her family.

Joan's family is unhappy about the quality of financial management provided by the NSW Trustee and would like to manage Joan's financial affairs themselves. Joan makes an application to the Mental Health Review Tribunal for a revocation of the order. However, as Joan cannot demonstrate her capacity to manage her own affairs, the original financial management order must remain in place.

For further information on Financial Management Orders, see Section 5 of the Mental Health Review Tribunal Hearing Kit: www.mhrt.nsw.gov.au (under Civil Patients)

Section 13

Consent to Surgery or Special Medical Treatment

13.1 What is surgery under the Mental Health Act?

A surgical operation is defined as a surgical procedure, a series of related surgical operations or surgical procedures, and the administration of an anaesthetic for the purpose of medical investigation (s98).

Examples of surgical operations include cholecystectomy, repair of inguinal hernia, and procedures requiring a general or local anaesthetic. Termination of pregnancy is also considered to be a surgical operation.

13.2 Consent to emergency surgery for involuntary patients (s99)

An authorised medical officer or the Director-General of Health may consent, in writing, to emergency surgery on an involuntary patient where:

- informed consent cannot be obtained from the patient (due to incapacity or unwillingness to give consent), and
- the surgery is necessary, as a matter of urgency, to save the patient's life or prevent serious damage to their health, or prevent ongoing pain or distress.

The authorised medical officer of the mental health facility must inform the primary carer and the Mental Health Review Tribunal of the performance of the operation as soon as practicable.

13.3 Consent to non-emergency surgery for involuntary patients

If the surgery is not an emergency, it can proceed where an involuntary patient has given informed consent.

Where informed consent cannot be obtained, or there is uncertainty about whether the patient is capable of giving informed consent, the following procedures apply:

- inform the primary carer in writing
- wait for 14 days for a response from the primary carer (or such lesser period as set out below).

Agreement of the primary carer (s100)

Where the primary carer agrees in writing, then an application is made to the Director-General for consent to the surgery.

The Director-General may consent if of the opinion that:

- informed consent cannot be obtained from the patient (due to incapacity or unwillingness to give consent), and
- the surgery is desirable, having regard to the interests of the patient.

An application may, however, be made to the Director General for consent before the 14-day period has elapsed where:

- the authorised medical officer is of the opinion that the urgency of the circumstances require an earlier determination, or
- the primary carer notifies that they (the primary carer) do not object to the surgery.

! The Director General has delegated these consent functions to senior officers within the Department of Health. To obtain consent from the delegate, contact the Mental Health Drug and Alcohol Office by fax on (02) 9391 9041 or phone (02) 9391 9307.

Lack of agreement of the primary carer (s101)

Where the primary carer does not agree in writing to the proposed surgery (or a primary carer cannot be identified), an authorised medical officer can apply to the Mental Health Review Tribunal for consent.

The Tribunal may consent where it is of the opinion that:

- informed consent cannot be obtained from the patient (due to incapacity or unwillingness to give consent), and
- the surgery is desirable, having regard to the interests of the patient.

As with the Director-General, an application for consent may be made to the Tribunal before the 14-day primary carer notification period has elapsed where:

- the authorised medical officer is of the opinion that the matter is urgent, or
- the primary carer notifies that they (the primary carer) do not object to the surgery.

13.4 Consent to special medical treatment for involuntary patients (ss102 & 103)

While the Mental Health Act allows other treatments to come under this category, at present special medical treatment only refers to sterilisation procedures or any treatment or procedures that are likely to result in a patient becoming permanently infertile.

This procedure can be performed on an involuntary patient where:

- a medical practitioner is of the opinion that it is necessary, as a matter of urgency, to carry out the treatment to save the patient's life or prevent serious damage to their health, or
- with the consent of the Mental Health Review Tribunal.

The Tribunal may consent to this treatment being given to an involuntary patient where it is satisfied that:

- it is necessary to prevent serious damage to the patient's health
- the patient is over 16 years of age.

The authorised medical officer must notify the patient's primary carer of the intention to seek consent for special medical treatment (Appendix 1).

At least 14 days must elapse after the notice is given to the primary carer before an application is made to the Tribunal, unless:

- the primary carer agrees, or
- the authorised medical officer is of the opinion that the urgency of the circumstances requires an earlier determination.

13.5 Consent to surgical treatment for voluntary patients

(ss100 & 101)

In general, a voluntary patient must consent to their own treatment (Guide Book Section 12.4).

However, either the Director General or the Tribunal may consent to surgery for a voluntary patient where:

- the patient is incapable of giving informed consent, and
- it is desirable and in the interests of the patient for the surgery to occur.

For further information on Applying for Consent to Surgery or Special Medical Treatment see Section 7 of the Mental Health Review Tribunal Hearing Kit: www.mhrt.nsw.gov.au (under Civil Patients)

Section 14

Transport by Health Service Staff, Police, Ambulance Officers

The transport and management of a consumer with a mental illness or mental disorder at times requires a coordinated response by mental health staff, ambulance and police officers to ensure that:

- the consumer receives appropriate care, and
- the safety of the consumer, staff involved, and the community is protected.

While the Mental Health Act provides the legislative framework for the allocation of responsibility, the Memorandum of Understanding between the Department of Health, the Ambulance Service and the NSW Police Force “commits [these] agencies to work in cooperation to promote a safe and coordinated system of care and transport” (Memorandum of Understanding, Mental Health Emergency Response, July 2007.)

As the changes to the 2007 Memorandum have not yet been finalised to reflect the changes to the Mental Health Act, staff of all three agencies should continue to follow the principles set down in that document.

The following, however, sets out the legislative provisions that relate to the safe transport of a mentally ill or mentally disordered person.

14.1 Involuntary admissions

Both ambulance officers (s20) and police officers (s22) have independent powers to take a person to a declared mental health facility against their will for the purpose of assessment (Guide Book Section 6.1).

14.2 Transport provisions

General transport provisions

The 2007 Act introduced specific provisions relating to transport, sedation, and searches (s81), bringing NSW law into line with other states.

A person may be taken to or from a mental health facility or transported between health facilities by:

- a member of staff of the NSW Health Service
- an ambulance officer
- a police officer
- a person prescribed by the regulations (none prescribed to date).

Any of these may:

- use reasonable force, and
- restrain the person in any way that is reasonably necessary in the circumstances.

During transportation, a person may be sedated:

- by a person authorised by law to administer a sedative
- if it is necessary to ensure the person's safety.

A frisk search or ordinary search may be carried out when a person is being transported where there is a reasonable suspicion that the person is carrying anything:

- that would present a danger to the person or another person, or
- that could be used to assist to person to escape.

Any such object can be seized and detained.

The Act defines a frisk search as:

- a search of a person conducted by quickly running the hands over the person's outer clothing or by passing an electronic metal detection device over or in close proximity to the person's outer clothes, or
- an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person, including an examination conducted by passing an electronic metal detection device over or in close proximity to that thing.

The Act defines an ordinary search as:

- a search of a person or of articles in the possession of the person that may include requiring the person to remove their overcoat, coat, jacket or similar article of clothing and any gloves, shoes, socks and hat, and any examination of those items.

Police assistance in transport

Police can be called upon to assist in transporting a person to a declared mental health facility where:

- a medical practitioner or accredited person who has completed a Schedule 1 has serious concerns about the safety of the person or others if the person is transported without police assistance (s21)
- an ambulance officer is of the opinion that there are serious concerns relating to the safety of the person or others in getting the person to a declared mental health facility (s20).

Where the police receive a request for assistance, they must, if practicable:

- either take or assist in taking the person to declared mental health facility, or
- arrange for another officer to do so.

Where police become involved because of their own concerns about a person's mental state (Guide Book Section 6.1 (s22)), or where they have received a request for assistance, they may enter premises without a warrant.

Police involvement in CTO breaches (s59)

If a mental health worker cannot implement a breach order, it may be given to the police. The police:

- must, if practicable, apprehend and take or assist in taking the consumer to the appropriate mental health facility
- may use reasonable force to enter premises without a warrant, apprehend the consumer, and transport them to the appropriate mental health facility.

Police involvement where consumer absent without leave from mental health facility (s49)

An authorised medical officer may request that a police officer apprehend, or assist in apprehending, a consumer who is absent without leave where there are serious concerns about the consumer's safety or the safety of others.

The police in these circumstances may:

- apprehend or assist in the apprehension of the consumer
- enter premises and apprehend the consumer without a warrant
- return the consumer to the mental health facility.

Section 15

Groups with Particular Needs under the Mental Health Act

While the provisions of the Mental Health Act apply generally to people within NSW, some groups require an additional level of service and attention for the objective of 'the best possible care and treatment in the least restrictive environment enabling the care and treatment to be effectively given' to be achieved.

15.1 Younger consumers

The Mental Health Act applies to children (those under 18) who come within the definitions of a 'mentally ill person' or a 'mentally disordered person'. It also contains some specific provisions that are dealt with in this section. While the use of the coercive powers of the legislation may at times be necessary, it is important to provide opportunities for a young consumer to exercise meaningful choice wherever possible.

In dealing with younger consumers, reference should also be made to the relevant Departmental policies; Child and Adolescent Mental Health Policy PD2005_037 and Mentally Ill Young People - Severely Disturbed - Interim Guidelines for Acute Care GL2005_006.

Involuntary admission

Young people can be admitted as involuntary patients in the same way as adults (Guide Book Section 6). However, it may be possible in some cases to achieve the necessary care and treatment through a voluntary admission with the consent and cooperation of the parent(s).

Voluntary admission (s6)

The Mental Health Act contains the following specific provisions in relation to the voluntary admission of children:

- if the child is under 16 years of age, the authorised medical officer must notify the parent as soon as practicable of the voluntary admission
- if the child is 14 or 15 years of age, they may choose to continue as an voluntary patient even where the parent objects
- if the child is under 14 years of age, parental consent is essential for a voluntary admission to proceed
- if the child is under 14 years of age, the authorised medical officer must discharge them if there is a request from a parent to do so.

Nomination of a primary carer

The primary carer of a child (i.e. under 18 years of age) is generally the parent. Where the child is over the age of 14, they may nominate someone other than a parent as their primary carer. However, where the child is between the ages of 14 and 18 years of age, the Act states that a parent may not be excluded from receiving notice or information (s72(3)) about the child unless the authorised medical officer reasonably believes that to do so may put the child at risk of serious harm (s72(7)).

Rights of young people under the Act

Young people in general have the same rights as adults under the Mental Health Act (Guide Book Section 3). In particular, they have the same rights to information and legal representation. Children's inexperience, however, can add another layer of complexity in considering how they can best be assisted to understand and exercise those rights.

15.2 Older consumers

The Mental Health Act contains no specific provisions for the care and treatment of older consumers, though psychological disorders occur and recur in older people as well. It may therefore be necessary at times to use the powers of the Act to involuntarily detain an older person or place them on a community treatment order. Conditions such as dementia and delirium, which

occur more often in older people, can cause difficulties in the application of the Mental Health Act. However, as with any person being assessed for potential admission, consideration should always be given to the definitions of a mentally ill person or a mentally disordered person.

At the time of initial assessment, it may not be possible to know whether an older person is suffering from dementia, delirium or another mental illness (such as late onset schizophrenia). Urgent admission for assessment may be necessary and is possible on the basis that the person is a mentally disordered person. If the subsequent diagnosis is one of delirium or dementia alone, the Guardianship Act (if necessary) may be used. A clear understanding of the relationship between the Guardianship Act and the Mental Health Act is crucial for those working with older consumers (Guide Book Section 12).

There are many social and medical factors associated with old age that add to the complexity of diagnosis and effective treatment for this group. It is, therefore, particularly important that a thorough assessment be conducted in consultation with those who have expertise in this area. Specialised psychogeriatric services are available in many areas and Aged Care Assessment Teams (ACATs) are located throughout NSW. A list of NSW ACATs can be found at

www.agedcare.connect.com.au/aged_care_assessment_team_nsw.php

In working with older consumers, reference should also be made to Specialist Mental Health Services for Older People (SMHSOP) - NSW Service Plan - 2005-2015 GL2006_013.

15.3 Cultural issues

The Mental Health Act specifies that the 'religious, cultural and language needs' of consumers be recognised and taken into account throughout the different stages of their care, control and treatment, and that they be informed of their legal rights and entitlements in 'the language, mode of communication or terms that they are most likely to understand'.

These provisions are particularly important in relation to those from Aboriginal or Culturally and Linguistically Diverse Backgrounds (CALD).

Even where language is not an obstacle, aspects of cultural difference may have a profound impact on assessment and treatment issues. Transcultural and Aboriginal mental health workers can provide:

- information about cultural, political or religious aspects of an assessment
- advice about a consumer who is reluctant to work with a mainstream professional
- referral to community support services or bilingual mental health professionals
- consultation on cross-cultural skills
- consultation regarding diagnosis and care planning (see Useful Contacts).

CALD consumers

A number of studies have established that CALD consumers have higher rates of:

- involuntary admission
- police involvement
- electro convulsive therapy
- community treatment orders.

Second language competency may also decrease dramatically in times of crisis. The difficulties and trauma associated with an episode of mental illness can often exacerbate language difficulties, even when a consumer is normally quite confident and fluent in English.

The implementation of practical measures to address language and cultural barriers throughout the assessment, admission and treatment process is therefore essential. This can be achieved through the use of:

- interpreters
- cross-cultural consultants.

The Mental Health Act makes specific reference to the consideration of cultural factors in relation to mental health inquiries where due regard must be had to:

- any cultural factors relating to the assessable person that may be relevant
- any evidence given at the inquiry by an expert witness concerning the assessable person's cultural background and its relevance to any question of mental illness (s35(2)).

Use of interpreters

Interpreters must be used when necessary:

- at medical examinations under the Act (s70)
- to explain the consumer's rights under the Act (s68 & s74(5))
- to obtain informed consent, e.g. to procedures such as electro convulsive therapy (s92(2(j)))
- at Mental Health Review Tribunal hearings (s158).

Interpreters and/or bilingual mental health professionals should be involved with:

- the examination process prior to admission as either a voluntary patient, an assessable person, or a mentally disordered person
- ongoing consultations with treating doctors
- informing relatives about aspects of the consumer's care and treatment
- the development of discharge plans
- the operation and use of a community treatment orders.

Booking an interpreter

Each Local Health District has a Health Care Interpreter Service. When making a booking, the following information should be provided:

- country of birth
- language required (and dialect where appropriate)
- consumer's name
- name and contact details of mental health professional
- location and anticipated duration of the booking

- preferred gender of the interpreter.

If the Local Health District Interpreting Service is unable to provide a service at the time required, the Telephone Interpreter Service is available 24 hours a day, 7 days a week on 131 450.

Aboriginal consumers

In dealing with Aboriginal consumers, reference should be made to the NSW Aboriginal Mental Health and Well Being Policy 2006 - 2010. It states that “Aboriginal people with mental health problems, their families and carers are to be offered access to Aboriginal mental health workers, or where unavailable, other Aboriginal health staff. With agreement from the consumer, Aboriginal mental health workers are to be involved at critical points of care such as initial assessment, crisis response, admission and discharge.” The policy underlines the importance of the following principles:

- the need for mainstream services to be culturally sensitive and to address the close association between physical health, mental health, and social, spiritual, cultural, historical, economic and political factors
- the need for self-determination
- the need for non-Aboriginal mental health workers to acknowledge the historical factors influencing Aboriginal Australians (including the enforced separation of Aboriginal children from their families)
- the need for appropriate services to address critical incidents that affect Aboriginal individuals, families and communities (including deaths in custody)
- the need for mainstream services to work in partnership with Aboriginal Community Controlled Health organisations.

It also details a number of specific targets and outcomes including:

- Aboriginal consumers to receive services from either a non-Aboriginal service provider accompanied by an Aboriginal person or an Aboriginal service provider

- Aboriginal consumers to be provided with the option to receive services that involve their families/extended families and/or significant others
- assessment, admission and case management for all Aboriginal consumers to incorporate consultation with an Aboriginal health worker
- discharge planning for all Aboriginal inpatients to incorporate consultation with an Aboriginal mental health worker and/or Aboriginal hospital liaison worker and family member and/or significant other
- all case reviews of Aboriginal consumers to include an Aboriginal health worker
- Aboriginal appointments to be made to the Mental Health Review Tribunal and Official Visitor's program.

Appendix 1

Summary of Major Changes brought about by the Mental Health Act 2007

Additional principles for care and treatment

- Care and treatment should be designed to assist people with a mental illness or disorder, wherever possible, to live, work and participate in the community.
- Every effort that is reasonably practicable should be made to involve consumers in the development of plans for their ongoing care.
- The role of primary carers and their rights to be kept informed should be given effect.
- Medication is to be prescribed for therapeutic and diagnostic purposes only and not as punishment or for the convenience of others.
- Services are to be timely and of high quality and provided in accordance with professionally accepted standards.
- The age, gender, religious, cultural and language needs of consumers and primary carers should be recognised.

The rights of consumers and primary carers

The rights of consumers and primary carers are specifically outlined in the Act and include:

- that all consumers taken to a mental health facility for involuntary assessment be given a Statement of Rights
- that interpreters be used at medical examinations when the consumer is unable to communicate adequately in English
- that information be given to primary carers about a range of matters including mental health inquiries, medication and discharge planning.

Primary carer provisions

- Enable consumers, if they choose, to nominate a 'primary carer' so that this person can receive information about their care and be involved in treatment planning.
- Enable consumers to exclude those they do not wish to have information about their care and treatment.
- Establish a process for identifying a primary carer when the consumer is unable to, or does not, nominate a particular person.

Ambulance Officers

- Trained ambulance officers have the authority to take a person to a mental health facility for assessment if they appear to be mentally ill or mentally disturbed.

Community Treatment Orders

- Community mental health services can apply for a CTO for a person who is living in the community and not currently on an order.
- CTOs can be made for up to 12 months in certain circumstances.
- CTOs are not terminated if the consumer is admitted to a mental health facility.

Electro convulsive therapy for involuntary patients

- In most cases, approval for ECT is limited to 12 treatments, though more than 12 treatments may be approved if the Mental Health Review Tribunal is satisfied the additional treatments are justified.

Transport of persons to and from mental health facilities and other health facilities

- Explicit provisions outline the use of reasonable force, restraint, sedation, and searches while transporting persons under the Mental Health Act.

Appendix 2

Mental Health Act 2007 Forms

The forms can be downloaded from

<http://www.health.nsw.gov.au/mhdao/legislation.asp>

Index of Forms

- Schedule 1 - Medical Certificate as to examination of observation of person
- Schedule 3 - Statement of rights
- Form 1 - Medical report as to mental state of detained person
- Form 2 - Notice to primary carer of proceedings before Mental Health Review Tribunal
- Form 4 - Appeal by patient to Tribunal against refusal to discharge
- Form 5 - Appeal by person other than patient against refusal to discharge
- Form 6 - Information and Consent to ECT
- Form 10 – Weekly advice to Mental Health Review Tribunal of involuntary referrals
- Application by Guardian for voluntary admission of person to hospital
- Application for consent to surgical operation
- Application from primary carer for discharge of patient
- Application to medical superintendent for review of decision of authorised medical officer
- Breach of Community Treatment Order
- Decision of primary carer in respect of proposed special medical treatment
- Decision of primary carer in respect of proposed surgery
- Nomination of Primary Carer
- Notice to detained person of Mental Health Inquiry
- Notice to Guardian of discharge of voluntary patient
- Notice to patient of breach of community treatment order

- Notice to primary carer of involuntary patient of application to Tribunal to consent to ECT
- Notification to primary carer of proposed special medical treatment
- Notification to primary carer of proposed surgery
- Personal application for voluntary admission to mental health facility
- Request by Ambulance Officer for assessment of a mentally ill or mentally disturbed person
- Request by member of the NSW Police Force for assessment of a mentally ill or mentally disturbed person at a mental health facility
- Transfer of involuntary patient between declared mental health facilities
- Your rights after the mental health inquiry

Appendix 3

Mental Health Review Tribunal Forms

These forms can be downloaded from:

<http://www.mhrt.nsw.gov.au/forms.htm>

Index of Forms

General:

- Application for Hearing
- A Brief Guide
- Information Sheet - Involuntary Patient Orders
- Forensic Victims Register - Registration Form
- Victims Services Information

Community Treatment Orders

- Application for a Community Treatment Order
- Information Sheet - Community Treatment Order
- Community Treatment Orders - Treatment Plan Guidelines
- Community Treatment Plan Template
- Application for a Variation or a Revocation of a Community Treatment Order

Financial Management Orders

- Information Sheet - Financial Management Orders
- Application to Revoke a Financial Management Order
- Information Sheet for Revocation of a Financial Management Order
- Draft Notice of Proceedings – Application for a Financial Management Order
- Confirmation of Service of Notice - Application for a Financial Management Order

Electro Convulsive Therapy (ECT)

- Information Sheet - Electro Convulsive Treatment
- Notice to primary carer of application to Tribunal to determine validity of consent for ECT for persons other than involuntary patients
- Summary ECT Flowchart
- Application for ECT Determination
- Recommendation for ECT for Involuntary Patients

Surgery and Special Medical Treatment

- Notification to Primary Carer of Emergency Surgery
- Notice to Tribunal of Emergency Surgery

Appendix 4

List of declared mental health facilities

The most up to date list of these facilities is available on the NSW Institute of Psychiatry website – www.nswiop.nsw.edu.au

Appendix 5

Useful Contacts

Advice on the Mental Health Act

Mental Health Advocacy Service

(02) 9745 4277

www.legalaid.nsw.gov.au

Mental Health Review Tribunal

(02) 9816 5955

Toll free: 1800 815 511

www.mhrt.nsw.gov.au

New South Wales Institute of Psychiatry

(02) 9840 3833

www.nswiop.nsw.edu.au

Complaints and Concerns

Health Care Complaints Commission

(02) 9219 7444

Toll free: 1800 043 159

www.hccc.nsw.gov.au

Official Visitors Program

Toll free: 1800 208 218

www.ovmh.nsw.gov.au

Consumer and Carer Organisations

Aftercare

Provides support services to families and carers of people with a mental illness in the South Eastern Sydney Local Health District and Illawarra Shoalhaven Local Health Districts.

South Eastern Sydney	Sydney (02) 9700 4018
Illawarra Shoalhaven	Wollongong (02) 4229 7254 Nowra (02) 4422 1547

Carers Assist

Provides support services to families and carers of people with a mental illness in the Murrumbidgee Local Health District, Southern NSW Local Health District, Hunter New England Local Health District, South Western Sydney Local Health District and Sydney Local Health District.

Murrumbidgee	Albury (02) 6021 5882 Griffith (02) 6962 3099 Wagga Wagga (02) 6925 9399
Southern NSW	Goulburn (02) 4822 3173 Moruya (02) 4474 0900 Queanbeyan (02) 6232 9044
Hunter New England	Armidale (02) 6772 3211 Newcastle (02) 4968 9268 Tamworth (02) 6761 3222 Taree (02) 6551 4333 Warialda (02) 6729 1392
South Western Sydney	Belmore (02) 9750 9744 Campbelltown (02) 4620 5255 Moss Vale (02) 4868 2755
Sydney	Belmore (02) 9750 9744

Carers NSW

Carers NSW is the peak organisation for carers in NSW and delivers services direct to carers including information, referrals, emotional support and counselling.

(02) 9280 4744

Toll Free: 1800 242 636

www.carersnsw.asn.au

Centacare Wilcannia-Forbes

Provides support services to families and carers of people with a mental illness in the Far Western and Western NSW Local Health Districts.

Far Western	Broken Hill (08) 8087 3477
Western NSW	Orange (02) 6393 1900 Dubbo (02) 6883 4600 Forbes (02) 6850 1777

Mental Health Carers ARAFMI NSW (Association of Relatives and Friends of the Mentally Ill)

ARAFMI is the peak organisation for carers of people living with mental illness, and provides a range of Provides support and advocacy for families and friends with mental illness or disorder.

(02) 9332 0700

Toll free: 1800 655 198

www.arafmi.org

Mental Health Information Service

Information and referral to over 2000 mental health services across NSW

1300 794 991

www.mentalhealth.asn.au

Mission Australia

Provides support services to families and carers of people with a mental illness in the Mid North Coast Local Health District and Northern NSW Local Health District.

Mid North Coast	Coffs Harbour (02) 6658 7831 Port Macquarie/Kempsey (02) 6584 1235
Northern NSW	Lismore (02) 6621 5675

NSW Consumer Advisory Group – Mental Health Inc

The statewide, non-government peak body that represents mental health consumers to all levels of the NSW Government.

(02) 9332 0200

www.nswcag.org.au

To find a Consumer Consultant see
“Other Information”

Schizophrenia Fellowship

(02) 9879 2600

www.sfnsw.org.au

Uniting Care Mental Health

Provides support services to families and carers of people with a mental illness in Nepean & Blue Mountains Local Health District, Western Sydney Local Health District, Northern Sydney Local Health District and Central Coast Local Health Districts.

Nepean & Blue Mountains	Parramatta (02) 8842 8289
Western Sydney	Parramatta (02) 8842 8289
Northern Sydney	Thornleigh (02) 9481 0177

Cultural Issues

Aboriginal

Aboriginal Health and Medical Research Council

(02) 9212 4777

ahmrc@ahmrc.org.au

Aboriginal Community Controlled Health Services

Albury Wodonga Aboriginal Health Service

(02) 6042 1200

Toll free: 1800 421 640

www.awahs.com.au

Dharah Gibinj Aboriginal Medical Service

(02) 6862 1611

www.casinoams.com

Illawarra Aboriginal Medical Service Aboriginal Corporation

(02) 4229 9495

www.illawarraams.com.ai

Walgett Aboriginal Medical service Cooperative Ltd

(02) 6828 1611

www.walgettams.com.au

CALD

Transcultural Mental Health Centre

(02) 9840 3800

Toll free: 1800 648 911

www.dhi.gov.au/tmhc

STARTTS

(Service for the Treatment and Rehabilitation of Torture and Trauma Survivors)

(02) 9794 1900

www.startts.org.au

NSW Refugee Health Service

(02) 8788 0770

www.refugeehealth.org.au

Interpreting

Telephone Interpreter Service (TIS)

131 450

Guardianship

Guardianship Tribunal

(02) 9556 7600

Toll free: 1800 463 928

www.gt.nsw.gov.au

Office of the Public Guardian

(02) 8688 2650

Toll free: 1800 451 510

www.lawlink.nsw.gov.au/lawlink/opg

NSW Trustee and Guardian

(02) 8688 2600

Toll free: 1300 360 466

www.lawlink.nsw.gov.au/opc