

MENTAL HEALTH ACT 2009

SUMMARY OF AMENDMENTS TO THE ACT AND POWERS AND RESPONSIBILITIES OF ALL MEDICAL PRACTITIONERS

SUMMARY OF AMENDMENTS TO THE ACT

Decision-making capacity

The Act now presumes a person has decision-making-capacity. An assessment needs to be undertaken to determine if a person has impaired decision-making capacity relating to appropriate treatment of their mental illness.

When making any order, a medical practitioner must also be satisfied that:

- the person has a mental illness;
- because of the illness, requires treatment for their or the protection of others due to risk of harm; and
- there is no less restrictive means than to make a particular order to ensure appropriate treatment.

Other key changes include:

- The Chief Psychiatrist now approves Act requirements such as forms, instruments, etc.;
- A level 1 Community Treatment Order (CTO1) can now be made for 42 (previously it was 28 days);
- A CTO1 is no longer reviewed by the South Australian Civil and Administrative Tribunal (SACAT);
- As a last resort, a Patient Assistance Request can be issued when a patient is not complying with their CTO1 order;
- A level 2 Inpatient Treatment Order can be extended on a once off basis for a further 42 days; and
- A Prescribed Psychiatric Treatment Panel will be established to monitor ECT and authorise neurosurgery for mental illness.

2. POWERS AND RESPONSIBILITIES OF ALL MEDICAL PRACTITIONERS

Power to make a level 1 Community Treatment Order [sections 10 (1) (2) (3) (4) & (6)]

- Level 1 Community Treatment Order (CTO1) can be made if:
 - a person has a mental illness;
 - because of mental illness needs treatment for their protection or that of others;
 - the person has impaired decision-making capacity regarding appropriate treatment for their mental illness; and
 - there is no less restrictive options.
- If made, the person must be provided with a copy of the order and a copy of their Statement of Rights. If the person is unable to read or comprehend the statement of rights, this information should be conveyed in a way the person can understand.

Capacity to apply to the South Australian Civil and Administrative Tribunal (SACAT) for a level 2 Community Treatment Order or variation or revocation [section 16 (4) and (8)]

Power to make a level 1 Inpatient Treatment Order (ITO1) [s.21 (1), (2) and (6)];

- A Level 1 Inpatient Treatment Order (ITO1) can be made if:

- a person has a mental illness;
 - because of mental illness needs treatment for their protection or that of others;
 - the person has impaired decision-making capacity regarding appropriate treatment for their mental illness; and
 - there is no less restrictive options.
- If made, a medical practitioner must provide the person a copy of the order and a copy of their Statement of Rights and ensure these are explained to the person and take practical steps to convey this information if the person is unable to read or comprehend the Statement of Rights.

Capacity to provide urgent treatment [ss. 13 (2); 18 (2), 24(1)-(3), 28 (2) and 31 (1) & (2)]

- Whilst treatment will normally be authorised by a psychiatrist or an authorised medical practitioner for patients who have been placed on a CTO1, CTO2 or ITO1, authorisation is not necessary if a medical practitioner considers treatment is urgently needed given the nature of that person's mental illness. Treatment can be given in the absence or refusal to give consent.

Capacity to apply to SACAT to seek variation or revocation of Level 3 Inpatient Treatment Order (ITO3) [s.29 (7)]

Authorised Officer powers (s.56)

Medical practitioners, including both public and private Psychiatrists, have been determined as Authorised Officers. S. 56 of the Act describes the responsibilities and powers of authorised officers to facilitate the assessment and /or treatment of a person who appears to have or has a mental illness and is at risk. **See Attachments 2 and 3 for more details.**

Other requirements

- Examination can be made via audio-visual if it is not possible to examine physically in the person's presence (s.5).
- A competent interpreter is required for an examination if the person cannot communicate in English but can do so in another language. An interpreter is not necessary where the medical practitioner and person can communicate in another language.
- A medical practitioner can apply for Tribunal consent for ECT for a person [s.42) (5)].
- A medical practitioner can apply for Tribunal consent for neurosurgery for mental illness for a person [s.43 (2)].
- Patient's right to support by a guardian or other person during an examination but a medical practitioner has discretion to exclude the guardian or other person if that is needed to facilitate the examination.
- Under s.56 of the Act allows Authorised Officers to take a person into their care and control to facilitate the assessment and /or treatment of a person who appears to have or has a mental illness and is at risk. Attachment 2 Fact Sheet provides information on the powers of Authorised Officers. The s.56 Care and Control powers are detailed in Attachment 3 Fact Sheet: s.56 Care and Control.
- Capacity to treat based on an interstate treatment order (s.68 (1) (e)).

- Power to treat an interstate patient without person's consent if authorised by a medical practitioner who has examined the patient and treatment is authorised by the Chief Psychiatrist.
- Requirement for person to be examined by a medical practitioner before an order is signed (s. 102 (1))
- Medical practitioner must ensure person has mental illness and not make false or misleading statement (s.102 (3)).
- Medical practitioners not to act in respect of relatives (s. 103).
- Must comply with a requirement to send or give notice to the Tribunal or Chief Psychiatrist (s. 108).