

Section 56 – Care and Control

What is an Authorised Officer?

An authorised officer is a person authorised by the Act to have certain responsibilities and take certain actions regarding people who appear to have or have a mental illness. For more information see the accompanying *Factsheet – Authorised Officers*.

What is the purpose of section 56 powers?

To facilitate assessment and/or treatment for a person who appears to have, or has, a mental illness and is at risk.

On whom can section 56 powers be used?

- A person who appears to have a mental illness and is at risk,
- A person subject to a Community Treatment Order for whom a Patient Assistance Request or a Patient Transport Request has been made,
- A person subject to an Inpatient Treatment Order for whom a Patient Transport Request has been made,
- A person subject to an Inpatient Treatment Order who is absent without leave from a treatment centre, or
- A person subject to an Inpatient Treatment Order who is being transferred to another treatment centre or hospital.

What are section 56 powers?

- Take a person into care and control,
- Transport a person from place to place,
- Restrain a person using force as reasonably required,
- Restrain a person using medication if authorised to do so under the *Controlled Substances Act 1984*,
- Enter and remain in a place where a person may be found, and
- Search a person and confiscate items that may be harmful.

What evidence do I need to use section 56 powers?

- Your own observations of the person's behaviour or appearance, **or**
- Reports about the person's appearance, behaviour or history.

What is the definition of care and control?

Care is defined as the responsibility for and treatment of a person with an illness. Control is defined as influence and authority over a person. For section 56, care and control is the use of your vocal, social and physical presence to influence and manage a person, to facilitate their assessment and/or treatment. A person you have made subject to section 56 powers is legally obliged to follow your instructions.

What is the legal status of care and control?

Care and control is not an order, it is a specific power that authorised officers can use to facilitate assessment and/or treatment. The use of any section 56(3) powers, including care and control, may be invoked at will by an authorised officer, and does not require the approval or confirmation of another officer empowered by the Act. It is important to note that because section 56 powers are not orders or instruments (such as an inpatient treatment order or a patient transport request) they are not "transferrable". However, the care of the person can be transferred.

How does handover occur?

Although care and control itself cannot be transferred, the responsibility for a patient's care and safety can be handed over. An authorised officer (or police officer) may handover their responsibility for a patient's care and safety to another authorised officer, who may then use their own section 56(3) powers to influence and manage that person. Handover should not occur until it is safe to do so and a receiving authorised officer is available. The receiving authorised officer can initiate section 56(3) powers based on their own observations **or** on reports from the delivering authorised officer (or police officer).

How long does care and control last?

The Act does not place a limit on the length of time that section 56(3) powers may be used but does say that the powers may be exercised only for as long as reasonably required. Given that the only purpose of section 56 is to facilitate assessment and/or treatment and that other sections of the Act place a time limit of within 24 hours or as soon as practicable, section 56 powers should be invoked for shorter periods whenever possible.

How do section 56 powers work in a team environment?

Just as the clinical care and support of a patient is shared between a team of clinicians under the supervision of the treating doctor, the care and control of a patient subject to section 56 may be carried out by a team of treatment centre staff, under the overarching supervision of the responsible authorised officer.

What are the rights of people subject to section 56 powers?

A person subject to section 56 is defined as a patient under the Act and has the right to be informed what is happening, to support (as reasonable in the circumstances), to communication (as reasonable in the circumstances) and to be given a copy of Statement of Rights #2 as soon as practicable.

What documentation is required?

The use of section 56(3) powers should be documented in the patient's records and should include: any handover information, reasons for using section 56(3), assessments, actions taken, and start and finish times, as well as any other information relevant to the specific circumstances. See *Chief Psychiatrist Approval – Section 56 record keeping* for more information.

Do I have to use section 56 powers if I'm an authorised officer?

As an authorised officer you can invoke section 56(3) powers at will. As with all decisions affecting people, you should base your decisions for section 56(s) powers on clinical circumstances, risk assessment, workplace health and safety, and the skills and capacity of the staff available.

Am I protected when using section 56(3) powers?

Yes. Section 74 of the *Public Sector Act 2009* provides protection to public officials, public sector employees, people delegated with powers or functions under an Act, and people assisting a public sector employee to enforce an Act. These protections apply to carrying out the powers and functions of the *Mental Health Act 2009*, including s56, and provide that no civil liability attaches to an individual but instead to the organisation.

For more information

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