

# Your health: Mental Health Act - Information for families

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This handout comes from Northern Sydney Health, Mental Health Services. It describes the Mental Health Act of NSW.

## What is the Mental Health Act?

A law that governs the care and treatment of people in NSW who experience a mental illness or mental disorder.

## What is the major aim of the Mental Health Act?

'Mentally ill' and 'mentally disordered' persons are to receive:

- The best possible care and treatment in the least restrictive environment
- Any interference with or restriction of their rights, dignity, and self respect is to be kept to a minimum

## To whom does the Mental Health Act apply?

The Act makes provisions for the care of people who:

- Are admitted to hospital voluntarily (informal patient)
- Are admitted to or detained in hospital against their wishes (involuntary or formal patient)
- Are required to receive treatment in the community
- Have committed an offence and are mentally ill (forensic patient)

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## Definitions

There are two key definitions:

1. A **mentally ill** person
2. A **mentally disordered** person

### What are the criteria for a mentally ill person?

- Has a mental illness (see definition below), and
- Risk of serious harm to self or others (includes physical harm, and harm to relationships, reputation, finances and self neglect), and
- Continuing condition, including any likely deterioration, taken into account, and
- No other care of a less restrictive kind is available

### Definition of mental illness

A condition which 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 or signs:

- Delusions
- Hallucinations
- Serious disorder of thought form
- Severe disturbance of mood
- Sustained or repeated irrational behaviour indicating that the person is having delusions or hallucinations

### Criteria for a mentally disordered person

- Displaying irrational behaviour
- Significant physical risk to self or others, and
- No other care of a less restrictive kind is available

## Exclusion criteria

A person cannot be regarded as 'mentally ill' or 'mentally disordered' for the purpose of the Act, merely because of the presence or lack of:

- Religious beliefs
- Philosophy
- Sexual preference/orientation

Or because of past or present involvement in:

- Sexual promiscuity
- Immoral or illegal conduct

Or because the person:

- Has a developmental disability
- Takes or has taken alcohol or any other drug
- Engages in antisocial behaviour

## Pathways to involuntary admission

- Certificate of medical practitioner
- After apprehension by the police
- Request of relatives/friends
- Order of the court
- Information of a welfare officer
- Following order for medical examination

## After the person gets to hospital

- Person must be given a form explaining their legal rights
- Examination by a doctor within 12 hours
- If neither mentally ill or mentally disordered, must be discharged
- If either mentally ill or disordered, must be a second examination
- In some cases a third examination is required.

## Being detained as a mentally disordered person

- Can be detained for 3 days
- Must be examined every 24 hours by a doctor
- Must be discharged if no longer mentally disordered
- Can be detained for 3 x 3 day periods within a month
- Interpreter provided where appropriate

## Being detained as a mentally ill person

- Must be seen by a magistrate
- Legally represented before the magistrate
- Medicated at minimum level until seen by magistrate
- Appear before the magistrate in street clothes
- Interpreter provided where appropriate
- Must be discharged if no longer a mentally ill person

## Who reviews decisions under the Mental Health Act?

Two external review processes:

1. The Magistrate's Inquiry
2. The Mental Health Review Tribunal

Patients can also have decisions about their care and treatment reviewed internally by the medical superintendent.

## Magistrate's Inquiry

The magistrate looks at whether those who have been admitted involuntarily:

- Are mentally ill under the Act
- Require further detention
- Whether the correct procedures have been followed

They may:

- Make a Temporary Order up to 3 months
- Place them on a Community Order
- Adjourn the inquiry for up to 14 days
- Discharge the person

### **Mental Health Review Tribunal**

The Tribunal has a wide range of powers to review decisions made under the Mental Health Act. These include:

- Renewing and approving Community Orders
- Looking into the care of voluntary patients who have been hospitalised for a year
- Authorising applications for ECT
- Hearing extensions of Temporary Patient Orders

### **Legal representation under the Mental Health Act**

- Mental Health Advocacy Service co-ordinates free legal representation for patients throughout NSW
- Free legal representation is generally only provided in cases of involuntary detention
- ? Patients can organise a private lawyer if they wish

### **What are community orders?**

Legal orders which require a person to have treatment in the community. There are two types:

1. Community Treatment Order (CTO)
2. Community Counselling Order (CCO)

Community orders can be:

- Made for up to 6 months
- Renewed with the approval of the Mental Health Review Tribunal

## Finding out more about the Mental Health Act

- Mental Health Review Tribunal
- Mental Health Advocacy Service
- Centre for Mental Health

### Note

This brochure comes from Northern Sydney Health, Mental Health Services. It is part of series of information sheets for families.



### Links

We have fact sheets on a number of mental health topics: **'Someone in my family has psychosis': Information for young people (primary school age)**, **'Someone in my family has psychosis: information for young people (high school age)**, **'What is psychosis?'**, **The Mental Health Act**.

**Printable version**



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