



The mental health legal framework in South Australia

Mental Health Act 1993

The Mental Health Act (1993) is the law that governs the treatment of people with mental illness in hospitals and the community. It aims to protect the rights of people with 'any illness or disorder of the mind' while ensuring that they have access to appropriate care. Some important features of this Act are:

- **Mentally ill and mentally disordered persons**

A "Mentally Ill Person" must have one or a number of symptoms set out in the Act and as a consequence present a risk of serious harm to themselves or others. The symptoms listed in the Act are: hallucinations, delusions, serious thought disorder, serious mood disorder, or sustained irrational behaviour suggesting the presence of one of these symptoms.

A "Mentally Disordered Person" is a person whose behaviour is so irrational that they place themselves or someone else at risk of serious physical harm.

- **Voluntary Admission**

Many people who have a good understanding of their mental wellbeing often voluntarily admit themselves for psychiatric care and treatment if needed. A person admitted to an approved treatment centre under section 11 of the Act may leave the centre at any time. But a person who seeks treatment voluntarily may also be made subject to an order for detention if the criteria are satisfied.

- **Orders for Admission and Detention** can be made when

the following criteria are satisfied:

- The person has a mental illness that requires immediate treatment
- Such treatment is available in an approved treatment centre
- The person should be admitted as a patient and detained in an approved treatment centre in the interests of his or her own health and safety or for the protection of other persons

There are a number of different detention orders:

A **Three Day Order** can be made by a doctor or a psychiatrist. It must be confirmed or revoked within 24 hours of admission. It expires three days after it is made.

A **21 Day Order** can be made by a psychiatrist if it is believed that further detention is necessary for treatment. A second 21-day order can be made by two psychiatrists.

A **Continuing Detention Order** can be made only by the Guardianship Board who must be satisfied that the person:

- still has a mental illness that requires treatment
- should continue to be detained for his or her own safety or that of others, and that no other less restrictive way would achieve the best possible outcome for his or her health and safety and/or the protection of the public

A Continuing Detention Order is made for a set period. No one order can last longer than twelve months, after which a new application can be made.

- **Treatment Order**

To give treatment to a person subject to a Continuing Detention Order, a Treatment Order must be granted by the Guardianship Board. The Board may authorise the giving of treatment to a person for his or her mental illness for a period not exceeding 12 months. An application for revocation of an order may be made by any one of the following: the person to whom the order relates, the Public Advocate, a medical practitioner or a guardian, a relative, or any other person who satisfies the Board that he or she has proper interest in the welfare of the person.

- **Community Treatment Order**

These are made in relation to voluntary patients or people living in the community who need treatment, have refused or failed, or are likely to refuse or fail, to undergo treatment and should be given treatment for their own safety or for the protection of others.

- **Informed Consent** occurs where the patient provides permission for a specific treatment to occur. For consent to be informed, the patient needs information that enables him or her to understand the procedure or treatment, the risks involved, the consequences of not having or agreeing to the treatment and also alternative treatments. The person must also be deemed well enough to be able to give informed consent.

- **Confidentiality** generally means that information about a patient is not given to people outside the service agency without the patient's permission.

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Protective bodies

A number of public bodies and appointed individuals protect the rights of people within the mental health system.

The Guardianship Board can exercise authority for the benefit of persons who, as a result of a mental incapacity, are unable to look after their own health, safety or welfare or to manage their own financial affairs. If requested, the Guardianship Board has the power to enquire whether a person has the ability to make life decisions such as where he or she should live, health care needs and other services, and about the management of finances. It may appoint a guardian to make major personal and medical decisions, or an administrator to manage financial affairs, or the Board may itself give consent for certain medical and dental treatments for people incapable of giving their own informed and effective consent. The Board hears appeals and reviews Treatment Orders.

The Office of the Public Advocate has a responsibility to promote and protect the rights and interests of people with mental incapacity and, where appropriate, their carers. It also provides information and advice about the Guardianship and Administration Act 1993, the Mental Health Act 1993 and issues relating to people with mental incapacity through the Enquiry Service and a range of printed and online resources.

Useful references

Office of the Public Advocate
1800 066 969

Guardianship Board
08 8368 5600

Mental Health Resource Centre
08 8221 5166

Legal Services Commission
1300 366 424

Mental Illness Fellowship
of South Australia Inc
08 8221 5160
www.mifsa.org

Mental Illness Fellowship of Australia
www.mifa.org.au

Mental Illness Fellowship Victoria
www.mifellowship.org