

Mental Health Act 2016

Statement of Rights

for patients of mental health services



Mental Health Act 2016

Statement of Rights

Mental Health Act 2016 Statement of Rights

Published by the State of Queensland (Queensland Health), January 2017. This document is licensed under a Creative Commons Attribution 3.0 Australia licence.

To view a copy of this licence, visit:
creativecommons.org/licenses/by/3.0/au

© State of Queensland (Queensland Health) 2017

You are free to copy, communicate and adapt the work, as long as you attribute the State of Queensland (Queensland Health).



For more information contact:

Mental Health, Alcohol and Other Drugs Branch,
Clinical Excellence Division

Department of Health | Queensland Government
15 Butterfield Street Herston, QLD 4006 Brisbane QLD 4000

Disclaimer:

The content presented in this publication is distributed by the Queensland Government as an information source only. The State of Queensland makes no statements, representations or warranties about the accuracy, completeness or reliability of any information contained in this publication. The State of Queensland disclaims all responsibility and all liability (including without limitation for liability in negligence) for all expenses, losses, damages and costs you might incur as a result of the information being inaccurate or incomplete in any way, and for any reason reliance was placed on such information.

Contents

The Statement of Rights	4
What is the <i>Statement of Rights</i> ?	4
Who does the <i>Statement of Rights</i> apply to?	4
How can an Independent Patient Rights Adviser assist me?	4
Understanding your rights	5
Capacity to make decisions	5
Less restrictive treatment	6
Treatment authorities	6
Rights during treatment and care	7
Complaints and second opinions	8
Right to information	8
Family, carers and other support persons	9
Mental Health Review Tribunal	10
Criminal justice system	11
Further information and support	11
How can I get further information on my rights?	11

The Statement of Rights

What is the Statement of Rights?

The *Statement of Rights* contains important information about your rights under the *Mental Health Act 2016*.

Who does the Statement of Rights apply to?

The *Statement of Rights* is for patients of a mental health service, namely:

- an **involuntary patient**, such as a person subject to a treatment authority made by a doctor under the *Mental Health Act 2016*, and
- a **voluntary patient** being treated in a mental health service, including a person being treated under an advance health directive or with the consent of a personal guardian or attorney.

The *Statement of Rights* is also for a patient's family, carers and other support persons.

How can an Independent Patient Rights Adviser assist me?

All public sector mental health services have appointed Independent Patient Rights Advisers.

The role of these advisers is to assist you, your family, carers and other support persons to understand your rights. They can also help you, your family, carers and other support persons communicate with health practitioners about your treatment and care.



Understanding your rights

Capacity to make decisions

What are my rights to make decisions about my own healthcare?

You are presumed to be able to make decisions about your own healthcare. This is called having capacity to make decisions.

If you are able to make decisions with the assistance of someone else, you are taken to have capacity to make these decisions. This is called supported decision-making.

If you are able to make decisions about your own healthcare, you have the right to consent, or not consent, to treatment and care.

What are my rights if I cannot make decisions?

A doctor may provide you with treatment and care without your consent under a treatment authority made by the doctor under the *Mental Health Act 2016*. Strict criteria (the treatment criteria) apply to making a treatment authority.

All of the following criteria must be met:

- you have a mental illness
- you do not have capacity to make decisions about your treatment and care for the illness
- there is an imminent risk of serious harm to you or others, or there is a risk of you suffering serious mental or physical deterioration.

A treatment authority cannot be made for you if you are able to make decisions about your own healthcare.



Less restrictive treatment

What is my right to be treated in a ‘less restrictive way’?

If you do not have capacity to make decisions about your treatment and care, you have a right to be treated in a less restrictive way. Being treated in a less restrictive way means you are treated with your own consent, or the consent of someone else, rather than being treated involuntarily under a treatment authority under the *Mental Health Act 2016*.

If you have made an advance health directive, but a treatment authority is made for you, a doctor will explain to you why the advance health directive was not used to treat you, and record this in your health record. This may apply if your advance health directive does not provide consent for the treatment and care you need to get well again.

Your views, wishes and preferences, which are outlined in your advance health directive, will still be considered by a doctor, even if a treatment authority is made for you. The doctor will explain why any of these views, wishes and preferences were not followed and record this in your health record.

The ‘less restrictive ways’ of treatment are:

- under an advance health directive that you have made
- with the consent of a personal guardian appointed for you under guardianship laws
- with the consent of an attorney who you have appointed to make decisions about your treatment and care
- with the consent of a statutory health attorney, such as a spouse who has a close and continuing relationship with you
- with the consent of your parents if you are under 18 years of age.

You can make an advance health directive by using the **Advance health directive for mental health** available from the *Mental Health Act 2016* website. See *How can I get further information on my rights? (page 11)*.

Treatment authorities

Will I need to stay in hospital if I am being treated under a treatment authority?

If you are being treated under a treatment authority, you will receive treatment while living in the community, for example, while living at home, unless your treatment and care needs cannot be met that way. If you are very unwell, you may need to be treated in a hospital until you are well enough to go home.

If you are being treated in a hospital, a doctor needs to decide whether you can leave the hospital on a limited basis. This is called limited community treatment. The purpose of limited community treatment is to support your recovery by transitioning you to living in the community with appropriate treatment and care.

The section **Mental Health Review Tribunal** (page 10) explains the Tribunal’s role in reviewing treatment authorities.

How long would I be treated under a treatment authority?

If a doctor who is not a psychiatrist makes a treatment authority for you, a psychiatrist must review the making of the treatment authority within 3 days. The psychiatrist may confirm the treatment authority, with or without amendments, or revoke the treatment authority.

You, or someone on your behalf, may apply to the Mental Health Review Tribunal to review the making of the treatment authority at any time.

A doctor will do an assessment of you, at least three-monthly, to decide whether your treatment authority should continue. A doctor must also do an assessment if, at any time, the treatment criteria may no longer apply or there may be a less restrictive way of treating you.

A doctor must revoke your treatment authority if the treatment criteria no longer apply, or there is a less restrictive way of treating you. This requirement does not apply if you have regained capacity to make decisions but your capacity is not stable, that is, where you gain and lose capacity over short periods of time.

Rights during your treatment and care

What are my rights as a patient?

You have a right for doctors and other persons who provide you with treatment and care to:

- safeguard your rights
- ensure your rights and liberties are affected only to the extent required to protect your safety and welfare, or the safety of others
- promote your recovery, and your ability to live in the community without the need for involuntary treatment and care.

You have a right for doctors and other persons to take into account important principles in the way they provide you with treatment and care. These include:

- recognising the right of all persons to the same basic human rights
- taking into account, to the greatest extent practicable, your views, wishes and preferences in making decisions
- involving, to the greatest extent practicable, family, carers and other support persons in decisions about your treatment and care, subject to your right to privacy.

You have a right for a doctor to ensure the treatment and care provided to you is appropriate for your treatment and care needs, and is in compliance with the requirements of the Act.

You have the right for doctors to record in your health records the treatment and care that is provided to you.

All of the principles are listed in the **Guide to patient rights** available from the *Mental Health Act 2016* website. See *How can I get further information on my rights?* (page 11).

What are my rights as an inpatient in a hospital?

You have the right to be visited by family, carers and other support persons at any reasonable time. However, a person can be excluded from visiting you if the service believes it would adversely affect your treatment and care. This can be appealed to the Mental Health Review Tribunal.

You have the right to be visited and examined by a health practitioner at any reasonable time under arrangements with the service.

You have the right to be visited by legal or other advisers at any reasonable time under arrangements with the service.

You have the right to communicate with other persons by post, telephone or electronic communication device. However, this does not apply if the other person asks that the communication does not take place, or if there is a 'non-contact' condition of an order in place under the *Mental Health Act 2016*. The service may also restrict communication by phone or electronic device for a particular patient or patients if it is likely to be detrimental to the health and wellbeing of the patient or others.

If you believe you should not be an inpatient in a hospital, but should be treated while living at home, you may apply to the Tribunal to have this reviewed. A support person may also apply to the Tribunal on your behalf.

Complaints and second opinions

How do I make a complaint or ask for a second opinion?

All mental health services have policies and procedures in place to receive and manage complaints made by a patient or someone on a patient's behalf.

You can ask an Independent Patient Rights Adviser or a staff member of the mental health service to explain to you how to make a complaint.

If a complaint about your treatment and care cannot be resolved, you have the right to request the service to obtain a second opinion about your treatment and care from another health practitioner. A family member, carer or other support person may also make this request.

The service must make arrangements to obtain the second opinion from a health practitioner who is independent of your treating team.

Right to information

What are my rights to receive information?

You have the right to receive timely, accurate and appropriate information about your treatment and care.

You have the right to be involved in decisions about your treatment and care, and have important matters explained or discussed with you, including key clinical decisions. For example, a health practitioner must discuss with you:

- the treatment and care to be provided to you when a treatment authority is made
- a regular assessment of your treatment authority, including the outcomes of the assessment
- the treatment and care to be provided to you if you are subject to a treatment authority and you are to leave hospital to be treated in the community.

You have the right for a doctor or other person to take reasonable steps to ensure you understand this information, for example, by having regard to your age, culture, mental illness, ability to communicate and any disability.

You also have a right to receive written notices and other documents about important matters under the Act, such as hearings of the Mental Health Review Tribunal.

A full list of when matters must be explained or discussed with you is available in the ***What you need to discuss with patients*** fact sheet. A list of written notices and other documents that must be given to you is available in the ***Written notices and other documents for patients*** fact sheet. See *How can I get further information on my rights?* (page 11) for more information.

Family, carers and other support persons

What rights do my family, carers and other support persons have?

Nominated support persons

You have a right to appoint one or two nominated support persons to assist you if you become unwell and become an involuntary patient under the *Mental Health Act 2016*. A nominated support person:

- must receive a copy of the notices under the Act that you are entitled to receive
- may discuss confidential information about your treatment and care with your treating team
- may support you, or represent you, at Tribunal hearings
- may request a psychiatrist report for you if you were to be charged with a serious offence (see *What rights do I have in the criminal justice system?*, page 11).

Communication with family, carers and other support persons

Where doctors and other persons are required to explain or discuss a matter with you, the person must also explain or discuss the matter with your nominated support person. If you do not have a nominated support person, the doctor or other persons must explain or discuss the matter with one or more of your family, carers or other support persons.

However, this requirement does not apply if:

- you request the communication not take place (at a time when you have the capacity to make this decision)
- the person is not readily available or willing for the communication to take place (for example, the person is not willing to visit the hospital, or cannot be contacted by phone)
- the communication is likely to be detrimental to your health and wellbeing (for example, the person has previously disrupted your treatment and care resulting in your condition deteriorating).

A health practitioner may also discuss matters with family, carers and other support persons if it is permitted under the *Hospital and Health Boards Act 2011*. This Act allows information to be disclosed to other persons if it is for the treatment and care of a person, or to a person who has sufficient interest in the health and welfare of a person.

Written notices

Where a written notice or other document is given to you, a copy must also be given to your nominated support person, a personal guardian appointed for you under guardianship laws and an attorney who you have appointed to make decisions about your treatment and care.

Mental Health Review Tribunal

How can the Mental Health Review Tribunal assist me?

The Mental Health Review Tribunal plays an important role in protecting your rights. The Tribunal is an independent body and is not part of Queensland Health or connected with any mental health service.

The primary role of the Tribunal is to review whether treatment authorities, and other orders under the Act, should continue or be revoked.

Treatment authorities

If a treatment authority is made for you, you have the right for it to be reviewed by the Tribunal within 28 days of it being made. The Tribunal must decide whether to continue, or revoke, the treatment authority.

If the Tribunal decides to continue the treatment authority, the Tribunal must decide if you should have increased treatment in the community, for example, while living at home.

If the treatment authority continues, the Tribunal must undertake further reviews every six months (for the following two reviews) and annually thereafter.

You or someone on your behalf also has the right to apply to the Tribunal for a review of the treatment authority at any time.

Electroconvulsive therapy (ECT)

The Tribunal protects the rights of patients where ECT is to be used as treatment.

If you are an adult who does not have capacity to make decisions about your treatment and care, ECT can only be used if approved by the Tribunal. If you are under 18 years of age, ECT can only be used if approved by the Tribunal. ECT can be used on particular involuntary patients in life-threatening emergencies but its continuing use must then be reviewed by the Tribunal.

Tribunal hearings

You have the right to participate in a Tribunal hearing that relates to you, and be represented by a nominated support person, lawyer or other person.

You have the right to be accompanied at a hearing by a nominated support person, a family member, carer or other support person or, with the Tribunal's approval, more than one person.

You have a right to free legal representation if you are under 18 years of age, for a hearing of your 'fitness for trial', for a hearing to perform ECT, and for a hearing where the Attorney-General is represented.

Appeals

You have the right to appeal a Tribunal decision to the Mental Health Court.

Criminal justice system

What rights do I have in the criminal justice system?

A relatively small number of persons with a mental illness, intellectual disability or other mental condition come into contact with the criminal justice system. In this situation, you would have the right to:

- request a magistrate consider your mental state at the time of the alleged offence or at the time of the hearing before the magistrate
- for a serious offence, request a psychiatrist report be prepared at no cost to provide an opinion on your mental state at the time of the alleged offence, or at the time of the hearing before the court
- for a serious offence, request the Mental Health Court to consider your mental state at the time of the alleged offence or at the time of the court hearing.

After considering your mental state at the time of the alleged offence or at the time of the hearing, a magistrate or the Mental Health Court may dismiss the charges against you. If the Mental Health Court made this decision for you, the Court may make a forensic order or treatment support order for you.

You have the right to have the order reviewed by the Tribunal every six months. You or someone on your behalf also has the right to apply to the Tribunal for a review of the order at any time.

Further information and support

How can I get further information on my rights?

If you become an inpatient in a hospital, an Independent Patient Rights Adviser or staff member of the mental health service will explain the *Statement of Rights* to you.

A copy of the *Statement of Rights* will be provided to you and your family, carers or other support persons if requested.

For a copy of this document or more information, including guides, forms and factsheets visit the *Mental Health Act 2016* website:

www.health.qld.gov.au/mental-health-act