

Overview of the Act

Objects and Principles

The objects of the Act are to be achieved in a way that:

- safeguards the rights of persons
- adversely affects a person's rights and liberties only to the extent necessary, and
- promotes patient recovery.

Strengthened patient rights

Patient rights are strengthened by:

- enabling a person to be treated without consent under a treatment authority only if the person lacks capacity (and therefore is unable to make decisions) and there is a serious risk of harm or deterioration
- requiring a person to be treated under an advance health directive, or with the consent of an attorney or guardian (and not under a treatment authority) if the person's treatment needs can be met that way
- requiring persons on treatment authorities to be placed on a community category unless the person's treatment needs cannot be met that way
- providing a right for a patient, or someone on the patient's behalf, to seek an independent second opinion if there are unresolved concerns about the patient's treatment and care
- establishing a patient's right to communicate by phone or electronic device while an inpatient, unless there is a risk to the patient or others
- the right for a patient to be visited by family, carers and other support persons at any reasonable time, unless it would cause risk to the patient, and
- the right for a patient to be visited by a health practitioner or a legal adviser.

The chief psychiatrist is required to prepare a Statement of Rights.

Independent Patient Rights Advisers

All public sector mental health services have appointed an Independent Patient Rights Adviser (or advisers) to advise patients and patients' families, carers and other support persons of their rights under the Act.

Advisers may be appointed in an external agency (such as a non-government organisation) or in a Hospital and Health Service, but not in a mental health service.

Strengthened role for support persons

A person may appoint one or two nominated support persons to support the person if the person becomes an involuntary patient. A nominated support person:

- must receive all notices that are given to the patient
- may discuss confidential information about the patient with the treating team, and
- may support the patient, or represent the patient, at hearings of the Mental Health Review Tribunal, and
- may request a psychiatrist report if the person is charged with a 'serious offence'.

Authorised doctors are required to discuss treatment and care with family, carers and other support persons, unless specific exceptions apply.

Written notices may be given to support persons.

Examinations

Examination authorities are made by the Mental Health Review Tribunal.

An examination authority gives power to enter premises and examine a person without consent.

Reasonable attempts must have been made to encourage the person to be treated voluntarily, unless such attempts are not practicable.

Advice from a health practitioner must be included in an application for an examination authority.

Emergency examination authorities are made under the *Public Health Act 2005*, to deal with persons who are at immediate risk of serious harm due to a major disturbance in the person's mental capacity, whether caused by illness, disability, injury, intoxication or another reason.

The emergency examination authority provisions authorise a police or ambulance officer to take a person to a hospital or other place for an examination.

Classified patients

A person in custody (in prison, a youth detention centre or a watch-house) who becomes acutely unwell may need to be transferred to an authorised mental health service for treatment and care as a 'classified patient'.

The chief psychiatrist is to be notified if a person is not transferred from a place of custody to an authorised mental health service for treatment and care as a classified patient within 72 hours of a recommendation being made.

Treatment and care

Authorised doctors must ensure patients receive timely, accurate and appropriate information about their treatment and care.

Authorised doctors must ensure that the treatment and care provided to a patient is, and continues to be, appropriate to the patient's needs and in accordance with the Act.

Authorised doctors are to record in the patient's health records the treatment and care that is provided to a patient.

Administrators of authorised mental health services must ensure auditable systems are in place for recording patients' treatment and care.

Administrators must also take reasonable steps to ensure that:

- patients receive the treatment and care recorded in the patients' records
- the other treatment and care needs of patients are met, and
- the treatment and care of patients is in accordance with the Act.

Restrictive practices

Safeguards are strengthened in the use of restrictive practices by:

- enabling the chief psychiatrist to issue directions on the use of seclusion in an authorised mental health service
- requiring chief psychiatrist approval for all uses of mechanical restraint

- introducing 'reduction and elimination plans' to allow the chief psychiatrist to approve seclusion or mechanical restraint within a plan for its reduction and elimination for the patient
- strengthening time limits on the use of seclusion and mechanical restraint on a patient
- introducing restrictions on the use of physical restraint, by requiring approval for its use, unless urgent or other specific circumstances apply, and
- requiring medications, such as sedation, only to be used where it is clinically necessary for the patient's treatment and care.

Psychiatrist reports

Persons on an authority or order charged with a 'serious offence' will be offered a free psychiatrist report.

A 'serious offence' is an indictable offence, other than an offence that must be heard by a magistrate (e.g. common assault).

A request for a report may also be made by a nominated support person, lawyer, parent, guardian or attorney.

Mental Health Court

The Mental Health Court's jurisdiction primarily relates to 'serious offences', which aligns with the criminal jurisdiction.

A community category is established for forensic orders, where treatment in the community is over 7 days.

A maximum 10-year non-revocation period for forensic orders may be set by the Court for the most serious offences, such as murder, manslaughter and rape.

The Court may recommend intervention programs for persons on forensic orders, such as a drug and alcohol program.

A less intensive form of order – a 'treatment support order' – may be made by the Court. Under this order, the Court and the Tribunal do not limit treatment in the community.

The Court is assisted by 'assistant clinicians', who are psychiatrists and persons with a background in the care of persons with an intellectual disability.

The Court may be assisted by only one assisting clinician where it is appropriate to do so.

Victims of unlawful acts

The Act includes principles in relation to victims of unlawful acts, to guide persons responsible for administering the Act.

Government agencies are permitted to exchange information to enable the Queensland Health Victim Support Service to offer its services to victims of unlawful acts.

Victims are not required to re-submit a victim impact statement to each review by the Tribunal of a forensic order.

Victims may receive information under 'information notices' that are approved by the chief psychiatrist, with time-frames for approvals of applications for an information notice included in the legislation.

Victims of unlawful acts will receive information under an information notice, including relevant Mental Health Review Tribunal decisions and a statement summarising the reasons that a forensic patient has been granted increased treatment in the community.

Magistrates Courts

Magistrates have the express power to dismiss charges if a person appears to have been of unsound mind at the time of an offence or is unfit to stand trial. This power applies to a person with a mental illness, intellectual disability or other mental condition. These powers are supported by a revised Court Liaison Service in Queensland Health.

A magistrate may also refer a person to an authorised mental health service for examination.

This examination could result in a treatment authority being made for the person, or the development of a treatment plan for the voluntary treatment of the person.

A magistrate has the discretion to refer any indictable offence to the Mental Health Court if a forensic order or treatment support order may be warranted, for example, for repeat offending behaviour.

Mental Health Review Tribunal

The Mental Health Review Tribunal has the function of reviewing:

- treatment authorities, forensic orders and treatment support orders
- the fitness for trial of particular persons, and
- the detention of minors in high security units.

The Tribunal also has the function of hearing applications:

- for examination authorities
- to perform regulated treatments (electroconvulsive therapy and deep brain stimulation procedures)
- for approval to transfer forensic order patients into and out of Queensland, and
- for approval to transfer treatment support order patients out of Queensland.

The first review of treatment authorities is to take place within 28 days after it is made.

When reviewing a forensic order, the Tribunal may make a treatment support order as a 'step-down' from the forensic order.

Free legal representation is provided for specific hearings, namely, for electroconvulsive therapy (ECT) applications, when the Attorney-General is represented, for 'fitness for trial' reviews, and for all hearing involving minors. All ECT for minors require approval by the Tribunal.

Deep brain stimulation procedures for a mental illness require the informed consent of the person and approval by the Tribunal.

Psychosurgery (involving the deliberate damage of brain tissue) is prohibited.

Chief psychiatrist

The chief psychiatrist has the key role of protecting patient rights, while balancing these rights with the rights of others. The chief psychiatrist makes Chief Psychiatrist Policies for matters stated in the Act. Authorised mental health services must abide by these policies.

The Act outlines minimum requirements for the chief psychiatrist's annual report.

Operational matters

The Act includes a single set of provisions for transporting patients under the Act. The Act includes clear provisions for searches of patients in authorised mental health services.

Authorised mental health services may appoint authorised doctors and authorised mental health practitioners who are given specific responsibilities under the Act.

There are no restrictions on the use of telehealth for examinations and assessments.