



Knowing Your Rights and Making a Complaint

A fact sheet produced by the Mental Health Information Service

What is the Mental Health Act and what does it guarantee?

The Mental Health Act of 2007 governs the treatment of people suffering from mental illness and mental disorders. The objective of the Act is to ensure that consumers receive the best possible quality of care while being treated and to protect their civil rights and dignity (Section 3).

The Act and the consumer's Statement of Rights are available at: <http://www.health.nsw.gov.au/mhdao/legislation.asp>. The Statement of Rights is also available in many different languages.

A consumer can be admitted to a mental health facility either voluntarily or involuntarily.

A person may admit themselves to a mental health facility as a voluntary patient (Mental Health Act, 2007, Section 5), and if the person is aged 16 years and under, medical staff are obligated to notify a parent of the person's admission (Section 6). It is possible that a person can be refused admittance to a facility if an authorised medical officer feels the person would not benefit from treatment or care as a voluntary patient or if appropriate care is available in the community (Section 5); the authorised medical officer also has the authority to discharge a voluntary patient at any time if they feel the person would not benefit from further care as a voluntary patient (Section 8). If a person has been admitted as a voluntary patient then they have the right to discharge themselves at any time from a mental health facility (Section 8), however, there is criteria in the Mental health Act regarding a voluntary patient being detained in a mental health facility if an authorised medical officer considers the person to be a "mentally ill person" or a "mentally disordered person" (Section 10).

Sometimes consumers will have to be admitted to inpatient facilities against their will. When this occurs the person must exhibit behaviours

which clearly show that they have a mental illness (a long term condition) or that they are currently mentally disordered (short term). According to the Mental Health Act (2007, Section 4) mental illness means “a condition that seriously impairs, either temporarily or permanently, the mental functioning of a person and is characterised by the presence in the person of any one or more of the following symptoms:

- (a) Delusions
- (b) Hallucinations
- (c) Serious disorder of thought form
- (d) A severe disturbance of mood
- (e) Sustained or repeated irrational behaviour indicating the presence of any one or more of the symptoms referred to in paragraphs (a)–(d).”

Also their condition must be severe enough to believe that involuntary admission is necessary for

- a) the person’s own protection from serious harm, or
- b) the protection of others from serious harm.

What happens once someone is admitted?

When being admitted, the consumer must be allowed to see at least one psychiatrist promptly, no later than twelve hours. People who are mentally disordered can only be kept for up to three days (excluding weekends), and must be seen by a doctor once every day during that time (Mental Health Act, 2007, Section 31). People who are mentally ill can be hospitalized until the Mental Health Review Tribunal examines their case.

How do I make a complaint against being involuntarily admitted to hospital and/or about the treatment I am receiving?

- **The Mental Health Review Tribunal**
The Mental Health Review Tribunal is set-up to review the admission of people into mental health facilities. The Tribunal must review cases at least once every three months during the first year

of admission, and once every six months in the following years (Mental Health Act, 2007, Section 37). If the tribunal finds that the decision to admit someone was inappropriate, they can overturn that decision. Consumers can make themselves heard at a tribunal about their current situation, and whether they feel they need to be kept in a facility or not. Consumers are entitled to legal representation at the hearing (Mental Health Act, 2007, Section 153).

- The tribunal can be contacted at 02 9816 5955 or 1800 815 511; email: mhrt@doh.health.nsw.gov.au.
- If consumers are dissatisfied with the decision they can appeal any decision made by the Mental Health Review Tribunal through the Supreme Court of NSW. To contact the Supreme Court of NSW Court of Appeal, Phone: 02 9230 8601.
- **The Official Visitors Program**
The Official Visitors Program is independent to the health system and is organised directly by the Health Minister to deal with problems in inpatient mental health facilities and people receiving community treatment orders. Official Visitors regularly visit mental health facilities in hospitals and community care centres to ensure that an adequate level of care is being provided, and that consumers' rights are being protected.
- If consumers or carers of people with a mental illness are dissatisfied with the treatment they are receiving they can contact the Official Visitors program to make a complaint. Callers leave their name and contact details and the Official Visitor will return their call and discuss their concerns further. If necessary, the Official Visitor will visit the consumer in their facility and make further enquiries about the care and treatment that they are receiving.
- The Official Visitor can be contacted at 1800 208 218 Monday-Friday 9am-5pm.

How do I make a complaint about a particular mental health practitioner?

Consumers of health care sometimes run into practitioners who they feel are behaving unethically or not providing them with adequate services.

These may include, for example, psychologists, psychiatrists, social workers, psychotherapists, nurses or counsellors amongst others.

Health Care Complaints Commission (HCCC)

The HCC is set up to deal with complaints about health service providers in NSW by providing opportunities and support for people to resolve their complaints, and if possible to resolve complaints between parties. If consumers or carers feel they are being mistreated by any mental health professional they can take their complaint directly to the HCCC, which shall take the appropriate steps to verify the details of the complaint and take appropriate actions. Health care service providers may also make complaints via the HCCC.

The HCCC provides a telephone service where someone can walk you through the process if you find it difficult to decide whether to make a complaint or putting your complaint on paper.

HCC can be contacted on 1800 043 159. A complaint form is available at <http://www.hccc.nsw.gov.au/Complaints/Online-Complaint-Form/Default/default.aspx>.

Advocacy groups to help you

Legal Aid and the Mental Health Advocacy Service

Legal Aid provides free advice on legal matters of all kind, including mental health. There is however a fee for representation and to be eligible there is a means-test process.

Legal Aid has a hotline which can be contacted on 1300 888 529, their Mental Health Advocacy Service can be contacted on 02 9745 4277.

Disability Advocacy NSW

Disability Advocacy NSW assists people with a disability (including mental illness) who have been unfairly treated in the Hunter Region.

Phone: 1300 365 085

JusticeAction

If you are a consumer in a forensic inpatient unit, or involved in the criminal justice system then JusticeAction might be an advocacy service that is helpful. They provide a watchdog and support and mentoring function. JusticeAction can be contacted on 02 9283 0123.

There are several official organisations which can help people with mental health conditions:

- **Anti-Discrimination Board of NSW**

The Anti-Discrimination Board of NSW is part of the NSW Attorney General's Department providing education and information to the public, employers and service providers regarding rights and responsibilities under anti-discrimination law. It investigates and conciliates complaints of discrimination, harassment and vilification.

Phone: 02 9268 5544 (Enquiries), 1800 670 812 (Rural Regional NSW)

- **Australian Human Rights Commission**

The Australian Human Rights Commission handles complaints of alleged discrimination lodged by individuals, advocates, etc. It administers Commonwealth legislation in the area of human rights, racial discrimination, sex discrimination, disability discrimination, and age discrimination.

Phone: 02 9284 9600, 1300 369 711 (General Enquiries), 1300 656 419 (Complaints Line)

- **NSW Ombudsman**

The NSW Ombudsman deals with complaints about the NSW public sector and the provision of community services, overseeing the investigation of complaints about police and the handling of allegations relating to child protection against employees of agencies within jurisdiction, and reviewing implementation of certain legislation. It provides an independent means of resolving complaints about community services and promotes compliance with community welfare legislation and the development of standards for the delivery of community services. Services covered include: accommodation, respite

care, home and community care, information services and other services to help children, young people and people with disabilities, older people, parents, foster carers, and licensed boarding houses. Not advocacy.

Phone: 02 9286 1000, 1800 451 524

- **NSW Disability Discrimination Legal Centre**

NSW Disability Discrimination Legal Centre represents people, including carers, with disability discrimination complaints.

Phone: 02 8014 7005, 1800 800 708 (NSW only)

Disclaimer

This information is for educational purposes. As neither brochures nor websites can diagnose people it is always important to obtain professional advice and/or help when needed. The listed websites provide additional information, but should not be taken as an endorsement or recommendation.

This information may be reproduced with an acknowledgement to the Mental Health Association NSW. This and other fact sheets are available for download from www.mentalhealth.asn.au. The Association encourages feedback and welcomes comments about the information provided.

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