

# Representatives and Support Persons

TASMANIA'S  
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## Chief Civil Psychiatrist and Chief Forensic Psychiatrist Clinical Guideline 3

### Purpose

This Clinical Guideline is intended to provide practical assistance to controlling authorities, persons in charge of community mental health premises, medical practitioners, nurses, Mental Health Officers and staff members of approved facilities and community mental health teams in relation to the rights that support persons and representatives of patients and prospective patients have under the *Mental Health Act 2013*.

The Order is designed to ensure that support persons and representatives of persons with serious mental illness – including family members, carers, appointed guardians, legal representatives and advocates – are included in decision making processes affecting the patient for whom they are a support person or representative to the maximum extent possible, consistent with the patient's wishes.

Failure by an individual to comply with this Clinical Guideline may result in professional or occupational disciplinary action being instituted, particularly if the failure leads to unfavourable patient outcomes that might have been avoided if the Guideline had been followed; or if there is a history of failure by the individual to comply with this Guideline, or with similar Guidelines in place at the relevant time.

### Legislative Basis

*Mental Health Act 2013* – sections 3, 10, 15, 23, 53, 54, 62, 105, 130, 131, 135, 137, 160, 161, 163, and 195, Schedule 1, Schedule 2 Part 2 Clause 3 and Schedule 4 Part 2 Clause 2.

### Rationale

Family members, carers, appointed guardians, friends, advocates and others involved with the care and support persons with a mental illness play a critical role. Care and support provided by family members and others is often what enables a person to remain well in the community; conversely carers and family members often take on what is reported to be akin to a case management-type role when the person for whom they are caring is significant unwell.

Many support persons and representatives of persons with a mental illness report feeling frustrated when the knowledge that they hold about the person for whom they are a representative or support person is overlooked, and either not gathered or not used, or both. Many support persons and representatives report feeling that the extent of their caring role is not acknowledged. Other support persons and representatives report feeling unsupported in standing up for the rights and interests of persons with a mental illness, and their own rights. These experiences can be exacerbated at times of extreme stress and distress.

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Family members, carers, appointed guardians, friends, advocates and others involved with the care and support of persons with mental illness often have extensive information about the person for whom they are caring or supporting, and deep and significant experience of the person's illness. This may include information about what upsets the person and why, the side effects of medications that the person may be taking and the person's emotional and other support needs when they are unwell. It may also include information about the person's financial management and housing arrangements, and lifestyle preferences and support systems.

This information and experience can be of vital importance in the assessment, treatment and care of persons with serious mental illness; and there is strong support for the view that active consumer and carer participation in decision making can lead to better treatment and care outcomes and significant reduction in stress for consumers, leading to consequent reduction in stress for carers and family members.

Family members, carers, appointed guardians, friends, advocates and others involved with the care and support of persons with mental illness also have distinct needs including the need for information. This includes information about the person's condition, medication, appointments and their progress. It also includes information about the rights that support persons and representatives have under the Act, and the supports that are available to enable those rights to be exercised.

Consumer and carer participation is identified as a priority in national policies such as the *National Carer Strategy*, *National Standards for Mental Health Services*, *National Mental Health Strategy*, and the four *National Mental Health Plans*. It is also identified as a priority for Tasmania through the development of Tasmania's *Consumer and Carer Participation Framework*, the impetus for which was a recommendation from the *Bridging the Gap Report 2004*, and more recently the launch of the *Tasmanian Carer Policy 2013* and *Tasmanian Carer Action Plan 2013 – 2018*.

### What Rights do Support Persons and Representatives Have?

Support persons and representatives have a range of rights. These include:

- The right to be recognised by health service providers as a representative or support person of a person with a mental illness, and to be acknowledged and treated with respect in this capacity. This applies regardless of how difficult the circumstances are, or whether the consumer, carer or support person is perceived to be uncooperative or difficult.
- The right to have permissions assigned to them by documents such as enduring guardianships and other agreements or advance expressions of the patient's wishes acknowledged, and taken into account in decision making processes.

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Support persons and representatives also have rights under the Act.

Specifically, the Act requires all persons exercising responsibilities under the Act to have regard to a series of service delivery principles including:

- Recognising the difficulty, importance and value of the role played by families, and support persons, of persons with mental illness. This includes recognising the extent of this involvement and the difficulty of the caring role, including the emotional, physical, mental and financial impact of caring for a person with a mental illness.
- Involving persons receiving services, and where appropriate their families and support persons, in decision-making, unless this is contrary to the person's wishes or not otherwise consistent with the patient's health or safety or the health or safety of others. This includes identifying the existence of any enduring guardianships or other advance expressions of the patient's wishes about the involvement of support persons and representatives in decision making processes. It also extends to providing consumers, support persons and representatives with information about how to find out more about enduring guardianships and other ways of expressing wishes about the involvement of support persons and representatives in the decision making process.
- Recognising families, and support persons, of persons with mental illness as partners, with mental health service providers, in the provision of their treatment and care to the extent that this is appropriate and consistent with the wishes of the patient and his or her representatives and support persons.
- Respecting the wishes of persons receiving services, and the wishes of their families and support persons, to the maximum extent consistent with the health and safety of those persons and the safety of others.

The Act also provides support persons and representatives of persons receiving or potentially receiving assessment, treatment and care under the Act with a series of specific rights and abilities, including:

- The ability to be nominated by a patient to represent the patient's interests under and for the purposes of the Act
- The ability to be given information of a confidential or personal nature about a patient where this has been consented to by the patient or, regardless of the patient's consent, if the treating medical practitioner considers this to be necessary for the patient's treatment or care. Information may also be given to a support person or representative if the person making the disclosure reasonably believes it to be necessary so as to prevent or lessen a serious threat to the life, health or safety of the patient or other person, or to lessen or prevent a serious threat to public health or safety
- The ability to apply to a medical practitioner for an Assessment Order

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- The ability to be consulted with in the development of treatment plans that are prepared for involuntary patients in appropriate circumstances
- The right to have contact with, and to correspond privately with, an involuntary patient for whom the person is a representative or support person
- The right for a representative to object to a police officer visiting with a forensic patient in a secure mental health unit
- The right to be present during a police visit if this is requested by a forensic patient in a secure mental health unit
- The ability to be notified of certain patient admissions, transfers and discharges subject to the patient's views about the notification being given and to the desirability of the notification being made with regard to the patient's health or safety or the safety of other persons and/or any Tribunal direction for the notification to be given
- The ability to be notified of certain patient leaves of absence and unlawful absences from approved facilities subject to the patient's views about the notification being given
- The right to be given information in a language or form that the support person understands, through the assistance of an interpreter or alternative or supplementary communication system if necessary
- The ability to ask the Principal Official Visitor to visit premises in or from which a patient is being provided with services under the Act
- The ability to make a complaint, concerning a patient, to an Official Visitor
- The ability to express a wish, on behalf of a patient, to see or complain to an Official Visitor to a person discharging responsibilities under the Act
- The right to ask a person who is purporting to exercise, discharge or perform a responsibility as a custodian or escort for proof of identity
- The ability to institute or intervene in Tribunal proceedings concerning a patient for which the person is a representative
- The right, if the support person or representative is a party to Tribunal proceedings, to attend the hearings held in those proceedings and to either appear personally or be represented by an Australian legal practitioner, advocate or other person

Parents of child patients who are required to be given a notice or other documentation under the Act additionally have the right to receive a copy of any notice or document that is given to the child, at the same time, subject to any objection from the child to this occurring.

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### Enabling Support Persons and Representatives to Exercise their Rights

This section of the Guideline sets out a number of ways in which support persons and representatives can be assisted to exercise their rights and abilities under the Act.

#### Identifying Support Persons and Representatives

Wherever practicable, before making decisions about a patient's assessment, treatment or care, staff members working within approved facilities and in community mental health teams should seek information from patients and prospective patients about the names and contact details of any support persons or representatives involved or potentially involved in the patient's future care. Patients and prospective patients should also be asked for details of any enduring guardianships or other advance expressions of their wishes, about the involvement of support persons and/or representatives in their care.

Patients and prospective patients should be advised of the ability to nominate a person to represent the patient's interests under and for the purposes of the Act, and about legal representation or advocacy services available within Tasmania. Patients and prospective patients should also be provided with a reasonable opportunity to make contact with such legal representation and/or advocacy services should this be requested by the patient and/or by a support person or representative of the patient, and at other times as may be considered necessary and/or appropriate.

This process should be followed both at the time that the patient is first assessed with respect to a mental illness and at regular intervals thereafter.

#### Identifying Patient Wishes in relation to Support Persons and Representatives

The patient's wishes about the involvement of support persons and representatives in decision making processes, and about the provision of confidential or sensitive information to support persons and representatives should be gauged as early as possible in the assessment, treatment and care process.

This information should be prominently recorded in the patient's clinical notes.

Similarly, any changes to the identity of a patient's support persons or representatives and/or of any changes to the patient's wishes about the provision of information to his or her support persons or representatives should be recorded in the patient's clinical notes as and when necessary.

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### Including Support Persons and Representatives in Decision Making Processes

Wherever practicable, before taking any significant action, including assessing a person under the Act, staff members working within approved facilities and in community mental health teams should seek to include support persons and representatives of patients and prospective patients in decision making processes affecting individual patients subject to any objection from the patient to this occurring.

Particular consideration should be given to including – or excluding – support persons and representatives in decisions about whether or not a person has decision making capacity.

While the presence of a support person or representative may assist some prospective or potential patients to exercise decision making capacity in relation to assessment or treatment decisions, there are other occasions when the presence of a support person or representative or of a particular support person or representative may compromise the person's ability to make a free and informed choice.

Support persons and representatives should not be used to provide interpreter services. Rather, only independent and qualified interpreters should be used.

### Receiving Information from Support Persons and Representatives

Support persons and representatives often have the majority of day-to-day contact with patients for whom they are a support or representative. They are often likely to be called upon to take over care when the patient is discharged or released. This makes them a critical source of information about the patient and generates a need for them to be provided with information, which is necessary for the ongoing treatment and care of the patient.

Staff members working within approved facilities and in community mental health teams should therefore prioritise communication with support persons and representatives of persons with a mental illness so that information which will or which may inform assessment, treatment and care decisions about individual patients and prospective patients can be obtained.

It should be remembered that while contact with support persons and representatives that is initiated by the treating team should be consistent with the patient's wishes, information about the patient may be received from support persons and representatives despite any objection from the patient or prospective patient to this occurring.

Staff members should take care to ensure that sensitive and/or confidential information about individual patients or prospective patients is disclosed according to the patient's wishes and only where this is consistent with the Act. Consideration should be given to matters including the patient's treatment and care needs following discharge from hospital and the extent to which the patient's support persons and/or representatives may require information to undertake caring and support person responsibilities.

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### Providing Patient Information to Support Persons and Representatives

Staff members working within approved facilities and in community mental health teams should provide patient and other information to persons who are, to the knowledge of the relevant staff member, a support person and/or representative of the patient or prospective patient:

- whenever this is required by the Act or Chief Civil Psychiatrist Standing Orders
- whenever this is permitted by the Act unless this is contrary to any objection from the patient
- whenever this is permitted by the Act and despite any objection from the patient if the information is of a general nature and does not extend to confidential or sensitive information
- whenever this is permitted by the Act and despite any objection by the patient if the patient's treating medical practitioner considers the disclosure to be necessary for the patient's treatment and care

In identifying whether or not a person is a support person or representative of a patient or prospective patient staff members should refer to the patient or prospective patient's clinical notes in the first instance. Consideration should also be given to the person's ability to make an informed decision about the provision of information to others given their mental state.

The identity of a patient's representatives and support persons and the patient's wishes about the provision of information to representatives and support persons should be regularly reviewed and the patient's clinical record should be updated accordingly.

### Supporting Support Persons and Representatives

Mental illness affects support persons and representatives of persons with mental illness and can cause big changes to how people in caring and support roles live their lives. Family members and carers of persons with mental illness can find it difficult to take "time out" and to talk about how they are feeling. This difficulty can be exacerbated if and when the person being cared for becomes extremely unwell.

Staff members can help support persons and representatives to cope effectively by:

- communicating clearly in an honest, open and understanding manner
- including support persons and representatives as valued members of the care team and respecting the significant role that support persons and representatives have
- providing information to support persons and representatives about support and respite services that are available, and if necessary, referring support persons and representatives to services which may assist them in their caring role. A range of services which may be of assistance are listed in the *Tasmanian Consumer, Family and Carer Support Guide*, which is available online at [www.dhhs.tas.gov.au/mentalhealth](http://www.dhhs.tas.gov.au/mentalhealth)

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- in a crisis situation, providing a calm, safe environment, not crowding, rushing or unnecessarily touching the consumer, support person or representative person and, if necessary, seeking help from the Mental Health Services Helpline on 1800 332 388 or from Ambulance Tasmania or Tasmania Police on 000

Children of parents with a mental illness have particular needs. Staff members should reassure children of parents with a mental illness that they are not alone, that they did not cause their parent's mental illness, and that their parents can recover. Children of parents with a mental illness should be given information about the general nature of their parent's illness and be encouraged to ask for help about how to write a plan for what they should do if their parent becomes unwell. For many young carers the caring role can require the assumption of adult responsibilities and interfere with schooling and sporting and social activities. This impact should be considered in any decision to refer a young carer to support services.

### Support Person and Representative Obligations

In addition to the rights set out in this document, support persons and representatives have a range of obligations, including to:

- advise staff if and when they cease to be a patient's support person or representative
- advise staff of any change to their contact details
- work with staff to achieve assessment, treatment and care outcomes
- be polite, to respect boundaries, and to follow reasonable instructions about behaviour and conduct within mental health services facilities that are given by staff
- respect a patient's wishes about matters such as whether or not information about the patient should be disclosed to the support person or representative
- provide members of the treating team with information about patients for whom they are a support person or representative that is accurate, impartial, and that is not deliberately misleading at all times
- respect a patient's decision to give or withhold informed consent to assessment or treatment

### Guidance for Controlling Authorities and Persons in Charge of Premises

Controlling authorities of approved facilities and persons in charge of community mental health premises should consider the requirements of the *Mental Health Act 2013* when developing policies and protocols around support person and representative engagement in the development and provision of assessment, treatment and care services to patients and prospective patients and when establishing and/or reviewing information management protocols and processes.

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Controlling authorities and persons in charge of premises should also ensure that staff members who are required, or potentially required, to exercise functions and powers under the Act are educated and trained in the requirements of the Act as they relate to the rights of support persons and representatives under the Act including in how to access interpreter services and alternative or supplementary communication systems.

Controlling authorities and persons in charge of premises should ensure that documentation which is produced specifically for and/or which is provided to support persons and representatives is in a language or form that is capable of being readily understood by a wide range of support persons and representatives.

Controlling authorities and persons in charge of premises should include the extent to which staff know how to apply the framework established by the Act and are aware of this Guideline, relevant Chief Civil Psychiatrist Standing Orders and any local policies and procedures associated with support person and representative engagement within the scope of quality assurance and review activities. Findings from activities conducted should be used to inform the development of training programs for staff.

### Guidance for Clinical Staff

Staff members working within approved facilities and in community mental health teams should ensure that they have a sound knowledge of the *Mental Health Act 2013*, this Guideline, relevant Chief Civil Psychiatrist Standing Orders and of any local policies and procedures relating to the rights of support persons and representatives under the Act which may be in place from time to time.

Staff members who are directly involved in the provision of patient care should ensure that they receive specific training in how to appropriately communicate and engage with support persons and representatives, including in how to access translation services and alternative and supplementary communication systems.

At the completion of training staff should be able to demonstrate an understanding of the Act as it applies to the rights of support persons and representatives of patients and prospective patients.



Dr Leonard George John Lambeth

Chief Civil Psychiatrist/Chief Forensic Psychiatrist

Date: 15 January 2014

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### Appendix I: Relevant Legislative Provisions

#### 3. Interpretation

**child** means a person who has not attained the age of 18 years

**Chief Civil Psychiatrist** means the psychiatrist who has been appointed by the Governor pursuant to section 143 of the Act. The Chief Civil Psychiatrist has responsibility for ensuring that the objects of the Act are met in respect of patients other than forensic patients or persons who are subject to supervision orders, and for the running of approved facilities other than secure mental health units.

**involuntary patient** means a person who is subject to an assessment order or treatment order

**forensic patient** means a person admitted to a secure mental health unit under section 68 of the Act and not discharged from the secure mental health unit

**guardian** has the same meaning as in the Guardianship and Administration Act 1995

**patient** means, according to the context, a voluntary inpatient, involuntary patient or forensic patient and, in relation to in special psychiatric treatment, includes a voluntary patient

**parent**, of a child, means a person having, for the child, all of the responsibilities which, by law, a parent has in relation to his or her children

**representative**, of a patient or prospective patient, means –

- (a) the patient's guardian; or
- (b) the patient's lawyer; or
- (c) if the patient is a child and raises no objection, a parent of the patient; or
- (d) any other person nominated by the patient to represent his or her interests

**statement of rights** means a written statement that sets out and succinctly explains, in plain language, what rights a patient or prospective patient has in the particular circumstances under this Act in which he or she is required to be given such a statement

**support person**, of a patient or prospective patient, means a person who provides the patient with ongoing care or support

**voluntary inpatient**, of an approved facility, means a person who

- (a) has been admitted to the facility voluntarily to receive treatment for a mental illness; and
- (b) is receiving that treatment on the basis of informed consent

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**voluntary patient** means a person who is not an involuntary patient or a forensic patient

### **10. Identifying representatives of patients, &c.**

(1) Where this Act requires a notice or other document to be given to a representative or support person of a patient, it means that the document is to be given to someone who is, to the knowledge of the person who has to comply with the requirement, such a representative or support person.

(2) For the purposes of subsection 1, the requisite standard of knowledge is knowledge that is already to hand or readily discoverable on reasonable inquiry, not knowledge that might only be discoverable after arduous or prolonged inquiry.

### **15. Mental health service delivery principles**

All persons exercising responsibilities under this Act are to have regard to the mental health service delivery principles set out in Schedule 1.

### **23. Application for assessment order**

(1) Any of the following persons may apply to a medical practitioner for an assessment order:

- (a) another medical practitioner;
- (b) a nurse;
- (c) an MHO;
- (d) a police officer;
- (e) a guardian, parent or support person of the person (the **prospective patient**) in respect of whom the application is made;
- (f) an ambulance officer;
- (g) a person prescribed by the regulations.

### **53. Preparation of treatment plan**

(1) A patient's treatment plan may be prepared by any medical practitioner involved in the patient's treatment or care.

(2) In preparing a treatment plan, a medical practitioner –

- (a) is to consult the patient; and
- (b) may, after consulting the patient, consult such other persons as the medical practitioner thinks fit in the circumstances.

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(3) A medical practitioner who prepares a treatment plan is to –

(a) give a copy of the treatment plan to –

(i) the patient; and

(ii) the CCP; and

(b) place a copy of the treatment plan on the patient's clinical record.

### **54. Variation of treatment plan**

(1) A patient's treatment plan may be varied at any time by any medical practitioner involved in the patient's treatment or care.

(2) The treatment plan for a patient subject to a treatment order may only be varied under subsection (1) if the treatment plan, as so varied, is in accordance with, and is not more restrictive of the patient's rights, privileges and freedom of action than, the treatment order.

(3) In varying a treatment plan, a medical practitioner –

(a) is to consult the patient; and

(b) may, after consulting the patient, consult such other persons as the medical practitioner thinks fit in the circumstances.

(4) A medical practitioner who varies a treatment plan is to –

(a) ensure that the variation (and the reason for the variation) is fully documented; and

(b) give a copy of the documentation to the CCP; and

(c) give a copy of the documentation to the Tribunal; and

(d) place a copy of the documentation on the patient's clinical record; and

(e) give notice of the variation (and the reason for the variation) to the patient.

(5) The notice to the patient may contain such further particulars as the medical practitioner thinks fit in the circumstances.

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### 62. Rights of involuntary patients

Every involuntary patient has the following rights:

- (a) the right to have the restrictions on, and interference with, his or her dignity, rights and freedoms kept to a minimum consistent with his or her health or safety and the safety of other persons;
- (b) the right to have his or her decision-making capacity promoted, and his or her wishes respected, to the maximum extent consistent with his or her health or safety and the safety of other persons;
- (c) the right, while in an approved hospital, to have access to current information about local, national and world events;
- (d) the right to be given clear, accurate and timely information about –
  - (i) his or her rights as an involuntary patient; and
  - (ii) the rules and conditions governing his or her conduct in the hospital; and
  - (iii) his or her diagnosis and treatment;
- (e) the right, while in an approved hospital, to apply for leave of absence in accordance with this Act;
- (f) the right to have contact with, and to correspond privately with, his or her representatives and support persons and with Official Visitors;
- (g) the right, while in an approved hospital, to be provided with general health care;
- (h) the right, while in an approved hospital, to wear his or her own clothing (where appropriate to the treatment setting);
- (i) the right, while in an approved hospital, not to be unreasonably deprived of any necessary physical aids;
- (j) the right, while in an approved hospital, to be detained in a manner befitting his or her assessment, treatment or care requirements;
- (k) the right, while in an approved hospital, to practise a religion of the patient's choice, to join with other patients in practising that religion and to possess such articles as are reasonably necessary for the practice of that religion (to such extent as is consistent with his or her health or safety, the safety of other persons and the management, good order and security of the hospital);
- (l) the right, while in an approved hospital –
  - (i) to practise customs in accordance with the patient's cultural beliefs or cultural background; and
  - (ii) to join with other patients in practising those customs; and
  - (iii) to possess articles that are reasonably necessary for the practice of those customs –

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to the extent that the practice of those customs is not contrary to any law and is consistent with the health and safety of the patient and other patients and the management, good order and security of the hospital;

(m) the right, while in an approved hospital, to ask for and be given such reasonable help from hospital staff as will enable the patient to enjoy these rights.

### 105. Police visits

(1) A responsible authority may allow a police officer to visit a forensic patient in an SMHU if satisfied that –

(a) it is for the purposes of a police investigation; and

(b) the patient, or any representative of the patient, after being informed of the patient's rights under this section, has no objection.

(2) The visit is to be on such conditions as to time, duration, termination, supervision, setting, secrecy or otherwise as the responsible authority determines and it is the duty of the police officer to comply with those conditions.

(3) The responsible authority, by any available means, may vary the conditions at any time.

(4) The patient has the following rights in respect of the visit:

(a) to confer, on request, with an Australian lawyer before it takes place, either in person or by telephone or video link;

(b) to have, on request, a representative, medical practitioner, SMHU staff member or support person present;

(c) to refuse to answer any question that may be put to the patient;

(d) to end the visit at any time.

(5) The visitation of a forensic patient in an SMHU under and in accordance with this section is –

(a) lawful notwithstanding the operation of any other law; and

(b) not reviewable by the Tribunal.

(6) Nothing in this section is to be taken as preventing or restricting police officers from –

(a) exercising ordinary investigative, enforcement or other powers as regards unlawful conduct by forensic patients or other persons in any SMHU; or

(b) exercising, in respect of forensic patients, powers under the Forensic Procedures Act 2000; or

(c) doing, in respect of any forensic patient or SMHU, anything else that may be authorised by or under other laws or by any court.

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(7) In this section –

**responsible authority** means –

- (a) the controlling authority of the SMHU; or
- (b) the CFP.

### **130. Notification of certain admissions, transfers and discharges**

(1) This section applies if –

- (a) a person is, or is going to be, admitted as a patient to an approved hospital or SMHU; or
- (b) a patient is, or is going to be, transferred from an approved hospital to –
  - (i) another approved hospital; or
  - (ii) an SMHU; or
- (c) a patient is, or is going to be, transferred from an SMHU to –
  - (i) another SMHU; or
  - (ii) a secure institution; or
  - (iii) an approved hospital; or
  - (iv) a health service within the meaning of the Health Complaints Act 1995; or
  - (v) premises where a health service within the meaning of the Health Complaints Act 1995 is provided; or
- (d) a patient is, or is going to be, discharged from an approved hospital, an SMHU, a secure institution, a health service within the meaning of the Health Complaints Act 1995 or a place from which such a service is provided.

(2) Subject to subsection 3, the controlling authority is to make a reasonable attempt to notify at least one interested person of the admission, transfer or discharge or, as the case may be, impending admission, transfer or discharge.

(3) However, the notification is not to be given over any objection by the patient unless –

- (a) an approved medical practitioner advises the controlling authority that the notification would be desirable having regard to –
  - (i) the patient's health or safety; or
  - (ii) the safety of other persons; or
- (b) the Tribunal directs the controlling authority to do so.

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(4) *In the case of an impending admission, transfer or discharge, the notification is to be given as far in advance as practicable.*

(5) *In this section –*

**interested person** means –

- (a) *a representative of the patient; or*
- (b) *a support person of the patient; or*
- (c) *any other person who the controlling authority reasonably regards as having a proper interest in the patient's welfare;*

**patient** means, as the context requires, an involuntary patient or forensic patient, and includes a prospective patient.

### **131. Notification of certain leave and unlawful absences**

(1) *This section applies if a patient –*

- (a) *is about to take leave of absence from an approved hospital or SHMU; or*
- (b) *has contravened a condition of a leave of absence from an approved hospital or SMHU; or*
- (c) *has absconded from an approved hospital or SMHU.*

(2) *In a case to which subsection 1(a) applies where the patient raises no objection, the controlling authority is to make a reasonable attempt to notify (as far in advance as practicable) at least one interested person of the impending leave of absence.*

(3) *In a case to which subsection 1(b) or (c) applies, the controlling authority is to make a reasonable attempt to notify at least one interested person of the unlawful absence or contravention.*

(4) *However, the controlling authority need not comply with this section regarding any matter if the controlling authority has, under another provision of this Act, already given notice of the same matter to someone who is an interested person within the meaning of this section.*

(5) *In this section –*

**abscond** means being absent without leave of absence or overstaying a leave of absence;

**interested person** means –

- (a) *a representative of the patient; or*
- (b) *a support person of the patient; or*
- (c) *any other person who the controlling authority reasonably regards as having a proper interest in the patient's welfare;*

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**patient** means, as the context requires, an involuntary patient or forensic patient.

### **135. Translation, interpreters, &c.**

All persons exercising responsibilities under this Act are, as far as may be reasonably practicable in the circumstances, to ensure that any information required to be given to a patient or to a representative or support person of a patient is, if necessary through the assistance of an interpreter or an alternative or augmentative communication system, given or relayed in a language or form that the patient or, as the case may be, the representative or support person understands.

### **137. Parents of child patients to be given same information as patients**

(1) A person who is required to give a patient a notice or other document under this Act must, if the patient is a child and the patient does not object, also give a copy of the notice or document to a parent of the patient at the same time.

(2) To avoid doubt, for subsection 1 the giving of the notice or document to one parent is sufficient.

### **160. Visits**

(1) The Principal Official Visitor must arrange for each approved facility to be visited by an Official Visitor at least once a month.

(2) The Principal Official Visitor must arrange for an Official Visitor to visit premises in or from which a patient is being provided with services under this Act if requested to do so by –

(a) the patient; or

(b) a representative or support person of the patient; or

(c) a person who, in the opinion of the Principal Official Visitor, has a genuine interest in the patient's welfare; or

(d) the Minister for Health.

(3) The Principal Official Visitor is not obliged to comply with subsection 2(a) in respect of any premises if –

(a) those premises have been visited by an Official Visitor in the month immediately preceding the making of the relevant request; or

(b) the Principal Official Visitor considers the relevant request to be frivolous or vexatious.

(4) A visit under this section may be made with or without notice.

(5) A visit to an SMHU under this section is subject to statutory or other reasonable requirements relating to the management, good order and discipline of the SMHU.

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### **161. Complaints**

- (1) Any patient is entitled to make a complaint to an Official Visitor.
- (2) An Official Visitor may also accept a complaint, concerning any patient, from –
  - (a) a support person, or representative, of the patient; or
  - (b) a person who, in the opinion of the Official Visitor, has a genuine interest in the patient's welfare.
- (3) A complaint may be made by any available means acceptable to the Official Visitor concerned.

### **163. Obligation of officials to assist Official Visitors, &c.**

- (1) All persons discharging responsibilities under this Act must give patients such reasonable help as they may require in making complaints under this Part.
- (2) Specifically, if a patient expresses to a person discharging responsibilities under this Act a wish to see or complain to an Official Visitor, the person must inform an Official Visitor of that wish within 24 hours.
- (3) Additionally, if a person discharging responsibilities under this Act knows that a patient has expressed a wish to see or complain to an Official Visitor, the person must, to the maximum extent of the person's lawful and physical capacity to do so –
  - (a) grant Official Visitors access to those parts of premises in which the patient is being accommodated or being assessed or treated; and
  - (b) facilitate private and direct communication between Official Visitors and the patient (consistently with the patient's wishes); and
  - (c) grant Official Visitors access to records relating to the patient's assessment, treatment and care, including clinical records (unless the patient has asked that Official Visitors not be granted that access); and
  - (d) grant Official Visitors access to other relevant records or registers required to be kept under this Act; and
  - (e) answer questions about the assessment, treatment and care of the patient to the best of the person's knowledge and in a full and frank manner (unless the patient has asked that Official Visitors not be provided with that information); and
  - (f) give Official Visitors such other reasonable assistance as they may require.
- (4) To avoid doubt, nothing in this section is to be taken as compelling any patient to –
  - (a) see, speak to or complain to an Official Visitor against the patient's will; or
  - (b) grant an Official Visitor access to any record concerning the patient.

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(5) *In this section –*

**wish**, of a patient, includes a wish expressed by a representative or support person of the patient on his or her behalf.

### **195. Form of applications for review, &c.**

(1) *An application to the Tribunal (whether for a review or any other matter) is to –*

- (a) *be in an MHT approved form; and*
- (b) *identify the patient and the applicant (if not the patient); and*
- (c) *identify the patient's representatives and support persons; and*
- (d) *state the grounds for seeking the review or, as the case may be, making the application; and*
- (e) *be lodged with the Registrar; and*
- (f) *be supported by such evidence or information as the Tribunal requires, either at the time of lodgement or subsequently; and*
- (g) *provide for any matter required by the regulations; and*
- (h) *be accompanied by any material required by the regulations.*

(2) *The Registrar may help any person make an application.*

(3) *The controlling authority of an approved facility is to ensure that –*

- (a) *patients in the approved facility are given reasonable help in making applications; and*
- (b) *without limiting this, lawyers, advocates, translators or other persons on whose skills a patient in the approved facility may need to rely in that regard are afforded reasonable access to the patient.*

(4) *An application may be withdrawn at any time.*

### **Schedule 1**

*1. The mental health service delivery principles are as follows:*

- (a) *to respect, observe and promote the inherent rights, liberty, dignity, autonomy and self-respect of persons with mental illness;*
- (b) *to interfere with or restrict the rights of persons with mental illness in the least restrictive way and to the least extent consistent with the protection of those persons, the protection of the public and the proper delivery of the relevant service;*
- (c) *to provide a service that is comprehensive, accessible, inclusive, equitable and free from stigma;*

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- (d) to be sensitive and responsive to individual needs (whether as to culture, language, age, religion, gender or other factors);*
- (e) to emphasise and value promotion, prevention and early detection and intervention;*
- (f) to seek to bring about the best therapeutic outcomes and promote patient recovery;*
- (g) to provide services that are consistent with patient treatment plans;*
- (h) to recognise the difficulty, importance and value of the role played by families, and support persons, of persons with mental illness;*
- (i) to recognise, observe and promote the rights, welfare and safety of the children and other dependants of persons with mental illness;*
- (j) to promote the ability of persons with mental illness to make their own choices;*
- (k) to involve persons receiving services, and where appropriate their families and support persons, in decision-making;*
- (l) to recognise families, and support persons, of persons with mental illness as partners, with mental health service providers, in the provision of their treatment and care to the extent that this is appropriate and consistent with their own wishes;*
- (m) to respect the wishes of persons receiving services, and the wishes of their families and support persons, to the maximum extent consistent with the health and safety of those persons and the safety of others;*
- (n) to promote and enable persons with mental illness to live, work and participate in their own community;*
- (o) to operate so as to raise community awareness and understanding of mental illness and to foster community-wide respect for the inherent rights, liberty, dignity, autonomy and self-respect of persons with mental illness;*
- (p) to be accountable;*
- (q) to recognise and be responsive to national and international clinical, technical and human rights trends, developments and advances.*

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### **SCHEDULE 2 - Custody and escort provisions**

#### **PART 2 - Powers and Duties**

##### **3. Proof of identity**

- (1) This clause applies if a person is purporting to exercise, discharge or perform a responsibility as a custodian or escort.
- (2) Any affected party may ask the person to produce proof of identity.
- (3) Subject to subclause 4, it is the person's duty to comply with the request.
- (4) For the purposes of subclause 3, it is sufficient if the person –
  - (a) in the case of an MHO, produces his or her MHO identity card; or
  - (b) in the case of an authorised person, produces his or her identity card, if issued, or instrument of authorisation; or
  - (c) in the case of a police officer or ambulance officer who is not in uniform, produces his or her MHO identity card, if issued, or –
    - (i) in the case of a police officer, his or her warrant card; or
    - (ii) in the case of an ambulance officer, his or her ambulance officer identification card; or
  - (d) in the case of a police officer or ambulance officer who is in uniform, states that he or she is acting as authorised custodian or escort under this Act.
- (5) A failure to comply with subclause 3 does not, of itself, invalidate the subsequent exercise, discharge or performance of the relevant responsibility.
- (6) The CFP or controlling authority of an SMHU may issue an authorised person with an identity card for use in connection with escort duties.
- (7) In this clause –

**affected party** means any of the following:

- (a) the patient;
- (b) a representative or support person of the patient;
- (c) the owner or occupier of any premises that the person purporting to act as custodian or escort is, in that capacity, seeking to enter;
- (d) the controlling authority of an approved facility from which the person purporting to act as custodian or escort is, in that capacity, seeking to remove the patient;

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(e) a Chief Psychiatrist.

### **SCHEDULE 4 - Proceedings of Tribunal**

#### **PART 2 - General procedures**

##### **2. Persons with standing**

The following persons have standing to institute or intervene in proceedings:

- (a) the patient;
- (b) the patient's representatives;
- (c) if the patient is or has been in an approved facility, the controlling authority of the approved facility;
- (d) if the patient is not a forensic patient, the CCP;
- (e) if the patient is a forensic patient, the CFP and, if the patient is also an involuntary patient, the CCP;
- (f) the treating medical practitioner;
- (g) by leave of the Tribunal, any other person who it considers to have a proper interest.