



An Overview of the *Mental Health Act 2013.*

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Tasmania's *Mental Health Act 2013* establishes a substitute decision making framework for people with mental illness who, because of their illness, cannot make their own assessment and treatment decisions but who need treatment to prevent harm to their own health or safety, or to the safety of others.

The Act provides for Assessment Orders and Treatment Orders and establishes the statutory offices of Chief Civil Psychiatrist and Chief Forensic Psychiatrist. The Act also provides for an independent Mental Health Tribunal and for the appointment of Official Visitors.

Critically, the Act seeks to put the needs and rights of consumers at the centre of assessment, treatment and care decisions.

Capacity and informed consent

The Act recognises the ability for a person with decision making capacity to make his or her own decisions about assessment, treatment and care for a mental illness and allows treatment to be given to an involuntary or forensic patient under the Act with the patient's informed consent, or if the treatment is specifically authorised by either a Chief Psychiatrist or under a Treatment Order.

The Act reinforces the need for an adult's decision making capacity to be presumed, and outlines how a person's decision making capacity can be assessed where this is in doubt.

Protective Custody

"Protective custody" is a coercive mechanism designed to get a person who is a risk to self or others because of a mental illness to a place of safety so that the person's mental health can be evaluated by a professional.

The Act enables a police officer or mental health officer to take a person into protective custody if the officer believes that the person has a mental illness, and has concerns about the person's safety or the safety of others.

Once a person is in protective custody they will be taken to an assessment centre where they can be seen by a medical practitioner so that a decision can be made about the person's further assessment or treatment needs, including whether an Assessment Order or Treatment Order is necessary.

Assessment Orders

An Assessment Order is a short term Order enabling a person to be assessed, without the person's informed consent, to determine the state of the person's mental health and to identify treatment options.

Assessment Orders are made by medical practitioners and may only last for longer than 24 hours if a psychiatrist is satisfied that:

- The person has or appears to have a mental illness that requires or is likely to require treatment for the person's health or safety or the safety of others, and
- The person cannot be properly assessed with regard to the mental illness or the making of a Treatment Order except under the authority of the Assessment Order, and
- The person does not have decision making capacity.

The maximum time for which an Assessment Order can stay in place is 96 hours.

An Assessment Order may require the person who is being assessed to be detained in an approved facility for a short period of time, so that the assessment can occur.

Treatment Orders

A Treatment Order is an Order enabling a person to be given specific treatment, without the person's informed consent.

Treatment Orders last, in most cases, for a maximum of six (6) months and may require the person who is being treated to be detained in an approved facility for the purposes of receiving the treatment authorised by the Order.

Treatment Orders are made by the Mental Health Tribunal and the in case of Orders lasting for more than 10 days, are required to be made at a hearing involving the person that the Order is being sought for and their representatives, along with members of the treating team.

The Mental Health Tribunal may only make a Treatment Order if satisfied that:

- The person has a mental illness, and
- Without treatment, the mental illness will, or is likely to seriously harm the person's health or safety or the safety of others, and
- The treatment cannot be adequately given except under a Treatment Order, and
- The person does not have decision making capacity.

The Act requires the Mental Health Tribunal to review Treatment Orders that it has made within set timeframes (within 30 and 90 days of the Order being made and at regular intervals thereafter).

The Mental Health Tribunal

The Mental Health Tribunal is established by the Act and its functions and powers are set out in the legislation.

More information about the Mental Health Tribunal can be found on the Tribunal's website:

www.mentalhealthtribunal.tas.gov.au

Official Visitors

Official Visitors are responsible under the Act for visiting approved facilities and for independently overseeing the assessment, treatment and care of involuntary patients and forensic patients.

Visitors may also receive complaints and refer any matters requiring further investigation to other complaints bodies as appropriate.

More information about Official Visitors can be found on the Official Visitor's website:

<http://www.officialvisitors.tas.gov.au/>

The Chief Civil Psychiatrist and Chief Forensic Psychiatrist

The Act provides for the independent statutory roles of Chief Civil Psychiatrist, and Chief Forensic Psychiatrist.

Together with the Mental Health Tribunal and Official Visitors, the Chief Psychiatrists provide an important review and oversight role.

More information about the Chief Psychiatrists can be found on the Office of the Chief Psychiatrist webpage: http://www.dhhs.tas.gov.au/mentalhealth/chief_psychiatrist