



## Assessment Orders under the Mental Health Act 2013

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.

### *What is an Assessment Order?*

An Assessment Order is a short term Order enabling a person to be assessed, without the person's informed consent, by an approved medical practitioner (generally, a psychiatrist) to diagnose the condition of a person's mental health and, where necessary, to identify the most appropriate treatment.

An Assessment Order may:

- Require a person to be assessed at a particular place, such as a hospital or community mental health premises
- 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
- Specify or provide for other matters, incidental to the person's assessment, that the medical practitioner making the Order considers necessary or desirable in the circumstances.

An Assessment Order cannot, however, authorise a person's treatment.

### *How are Assessment Orders made?*

Assessment Orders are made by medical practitioners.

An Assessment Order may be made by any medical practitioner who is in receipt of an application. The medical practitioner must also have examined the patient and be satisfied from that examination that the person needs to be assessed against the assessment criteria, and that a reasonable attempt to have the person assessed with informed consent has failed or would be futile or inappropriate.

An Assessment Order may be applied for by a medical practitioner, nurse, police officer, ambulance officer, Mental Health Officer or guardian or support person of the person that the Order is being sought for. The applicant must be satisfied that the person has or might have a mental illness, and that a reasonable attempt to have the person assessed with informed consent has failed or would be futile or inappropriate.

#### *What are the assessment criteria?*

The assessment criteria are:

- 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.

#### *How are Assessment Orders affirmed?*

An Assessment Order may be affirmed by an approved medical practitioner (generally, a psychiatrist) who has independently assessed the person while the Order is in place.

The approved medical practitioner who affirms the Order must not be the same person as the person who applied for the Order or the medical practitioner who made the Order.

The approved medical practitioner may only affirm the Assessment Order if he or she is satisfied that the person meets the assessment criteria.

At the same time as affirming an Assessment Order the approved medical practitioner may decide to extend the Order's operation for up to an additional 72 hours.

#### *How long do Assessment Orders last for?*

Once made by a medical practitioner, an Assessment Order lasts for up to 24 hours.

An Assessment Order that has been affirmed and extended in operation lasts until the end of the period for which the Order has been extended.

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

#### *How are Assessment Orders discharged?*

An Assessment Order may be discharged at any time while the Order is in effect by:

- The medical practitioner who made the Order
- Any approved medical practitioner (including the approved medical practitioner who has independently assessed the person)
- The Mental Health Tribunal.

An Assessment Order may be discharged for any reason, including if a medical practitioner is satisfied that the person does not meet the assessment criteria.

In the case of the Mental Health Tribunal an Assessment Order may be discharged if the Tribunal makes a Treatment Order for the person or following a review of the Assessment Order.

### *Medical practitioner obligations*

A medical practitioner who makes an Assessment Order is required to give a copy of the Order, and a Statement of Rights, to the patient.

The medical practitioner is also required to give a copy of the Order to the approved medical practitioner who is likely to independently assess the patient and, if relevant, to the controlling authority of the hospital in which the patient is going to be assessed, and to place a copy of the Order on the patient's clinical record.

An approved medical practitioner who affirms an Assessment Order is required to notify the patient, the medical practitioner who made the Order, the Chief Civil Psychiatrist, the Mental Health Tribunal, and, if relevant, the controlling authority of the hospital in which the patient is going to be assessed. The approved medical practitioner is also required to place a copy of relevant documentation on the patient's clinical record.

A medical practitioner or approved medical practitioner who discharges an Assessment Order is required to give a copy of relevant documentation to the patient, the Chief Civil Psychiatrist, the Mental Health Tribunal, and, if relevant, the approved medical practitioner who was going to independently assess the patient or the controlling authority of the hospital in which the patient was going to be assessed. The medical practitioner or approved medical practitioner is also required to place a copy of relevant documentation on the patient's clinical record.

### *Patient rights*

A person who is placed on an Assessment Order has the right to:

- Be provided with a copy of the Order, notice that the Order has been affirmed or discharged (if the Order is affirmed or discharged), and a Statement of Rights
- Be given information in a language and form that the person can understand
- Make a complaint to an Official Visitor
- Ask the Chief Civil Psychiatrist to exercise his or her power of direct intervention
- Ask the Mental Health Tribunal to review the making of the Order

A copy of the Statement of Rights for Involuntary Patients can be found here:

[http://www.dhhs.tas.gov.au/\\_\\_data/assets/pdf\\_file/0011/151400/SoR\\_InvoluntaryPatients.pdf](http://www.dhhs.tas.gov.au/__data/assets/pdf_file/0011/151400/SoR_InvoluntaryPatients.pdf)

## Other Resources:

### Accompanying Fact Sheets

You can access a range of information and resources online by clicking on the Mental Health Act logo at [www.dhhs.tas.gov.au/mentalhealth](http://www.dhhs.tas.gov.au/mentalhealth)

Some of the Fact Sheets available for download include:

- *What do I need to Know? An Overview of the new Mental Health Act 2013*
- *Patient Statement of Rights*
- *What do I need to Know? Information for Consumers Currently Being Treated Under the Mental Health Act 1996*

*This Fact Sheet also provides a list of questions which consumers may consider asking their Case Manager or Treating Practitioner, and which you may find useful to work through with the person you are caring for and/or supporting.*

### Other Organisations

#### **Mental Health Carers Tasmania:**

**[www.mentalhealthcarerstas.org.au](http://www.mentalhealthcarerstas.org.au)**

Mental Health Carers Tasmania (MHCTas) is a statewide leader in the provision of Mental Health carer support. MHCTas aims to improve the quality of life for the one in five Tasmanian families, friends, carers and people living with mental health issues and mental illness.

Phone:

South - 6228 7448

North - 6349 1121

North West - 6441 5280

#### **Flourish Tasmania:**

**[www.flourishtas.org.au](http://www.flourishtas.org.au)**

Flourish Mental Health Action in Our Hands Inc. is an independent Tasmanian not-for-profit organisation established to provide a strong voice for the state's mental health consumers. Flourish does not deliver individual services. It works with consumers, government, service providers and families to ensure that the delivery of mental health services is a quality process that meets the needs and expectations of all consumers.

Phone: 6223 1952

#### **Advocacy Tasmania:**

**[www.advocacytasmania.org.au](http://www.advocacytasmania.org.au)**

This service is for consumers and carers. Advocates can assist people to exercise their rights and responsibilities.

Phone:

Hobart - 1800 005 131

Devonport - 6441 0201

Launceston - 6331 0740

#### **The Legal Aid Commission:**

**[www.legalaid.tas.gov.au/](http://www.legalaid.tas.gov.au/)**

Legal Aid can provide lawyers to represent the rights of individuals with mental health issues, especially in cases where they may be detained and/or medically treated against their will.

**Phone: 1300 366 611**

#### **The Mental Health Tribunal:**

**[www.mentalhealthtribunal.tas.gov.au/](http://www.mentalhealthtribunal.tas.gov.au/)**

The Tribunal is an independent body established to protect the rights of people placed on involuntary orders for mental illness. It provides an independent review, and makes decisions about whether the involuntary order will continue or not. The Tribunal plays no role in relation to persons who voluntarily seek treatment for a mental illness.

#### **Official Visitors:**

**[officialvisitors.tas.gov.au/](http://officialvisitors.tas.gov.au/)**

Mental Health Official Visitors are members of the community who are appointed to visit approved hospitals and the secure mental health unit, the Wilfred Lopes Centre, to check on the way in which people with mental illness are being treated. They also investigate complaints made to them by people receiving care and treatment in these facilities for mental illness.

**Phone: 1800 001 170**