



New South Wales

Mental Health Amendment (Statutory Review) Bill 2014

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are to amend the *Mental Health Act 2007* (the **Principal Act**) as follows:

- (a) to include in the principles for the care and treatment of people with a mental illness or mental disorder a requirement to consider the views and expressed wishes of those people in developing treatment and recovery plans and a requirement relating to obtaining consent, where reasonably practicable, to such plans,
- (b) to extend the reach of existing requirements to consult with and inform carers of persons with a mental illness or mental disorder by enabling a person to nominate more than one carer for that purpose and recognising a category of individuals who are principal care providers,
- (c) to enable a voluntary patient to be detained in a mental health facility for up to 2 hours for the purpose of a review by a medical officer to ascertain whether the patient should be detained in the facility for assessment,
- (d) to provide for alternatives to personal examination or observation of a person by a medical practitioner where such examination or observation is not possible for the purpose of determining whether to detain the person in a mental health facility for assessment or to hold a mental health inquiry,
- (e) to enable community treatment orders to be made in additional proceedings and to make further provision about consultation on and notice of community treatment orders,
- (f) to tighten the requirements to be met for administering electro convulsive therapy (**ECT**) to persons under the age of 16 years,

- (g) to amend provisions relating to non-psychiatric treatments to remove provision for voluntary patients and for greater consistency with similar provisions in other legislation,
- (h) to require persons under the age of 16 years to have legal or other representation in any proceedings before the Mental Health Review Tribunal (the *Tribunal*),
- (i) to make other minor amendments, to update references and expressions and to enact provisions of a savings and transitional nature consequent on the enactment of the proposed Act.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Mental Health Act 2007 No 8

Care, capacity and consent

Schedule 1 [2] includes in the objects of the Principal Act the object of promoting the recovery of persons who are mentally ill or mentally disordered.

Schedule 1 [3] amends the objects of the Principal Act to remove references to control of patients so as to reflect a focus on the care and treatment of patients.

Schedule 1 [4] amends the objects of the Principal Act to recognise the provision of treatment for the purpose of protecting a patient or other persons from harm.

Schedule 1 [34] inserts a requirement to support people with a mental illness or mental disorder to pursue their own recovery in the principles set out for care and treatment.

Schedule 1 [35] adds to the principles for the care and treatment of people with a mental illness or mental disorder the principles that people under the age of 18 years should receive developmentally appropriate services and that the cultural and spiritual beliefs and practices of people who are Aboriginal persons or Torres Strait Islanders should be recognised. The amendment also provides for special needs related to disability or sexuality to be recognised in care and treatment.

Schedule 1 [36] updates a reference to treatment plans.

Schedule 1 [37] adds to the principles for the care and treatment of persons with a mental illness or mental disorder a new principle requiring that every reasonably practicable effort should be made to obtain the consent of people with a mental illness or mental disorder to treatment plans and recovery plans, to monitor their capacity to consent and to support persons who lack the capacity to consent to understand those plans.

Schedule 1 [38] inserts a right for carers to be kept informed and involved, and to have information provided by them considered, in the principles relating to the care and treatment of persons with a mental illness or mental disorder.

Designated carers and principal care providers

Schedule 1 [6] inserts definitions of *designated carer* and *principal care provider*.

Schedule 1 [11] and [14] enable the principal care provider of a person to make a written request that the person be detained in a mental health facility and also update references to primary carers so that they refer to designated carers.

Schedule 1 [12] prohibits a mental health certificate from being given for a person if the medical practitioner or accredited person giving the certificate is the principal care provider of the person. The amendment also updates a reference to a primary carer so that it refers to a designated carer. **Schedule 1 [83]** makes a consequential amendment.

Schedule 1 [19] enables a person who has been brought to a mental health facility by a police officer and who is not to be further detained to be discharged into the care of the person's principal care provider. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

Schedule 1 [21] enables the principal care provider of an assessable person to appear at a mental health inquiry and also updates a reference to a primary carer so that it refers to a designated carer. **Schedule 1 [20]** makes a consequential amendment.

Schedule 1 [25] enables the principal care provider of an involuntary patient or person detained in a mental health facility to apply for the discharge of the patient or person. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

Schedule 1 [33], [39], [40], [67] and [69] update references.

Schedule 1 [41] makes it clear that only individuals are included in the class of carers who may be designated carers.

Schedule 1 [42] includes the extended family and kin of a patient who is an Aboriginal person or a Torres Strait Islander in the category of persons who may be included as relatives for the purposes of determining the designated carer of a patient.

Schedule 1 [43] enables a person to nominate up to 2 designated carers.

Schedule 1 [44] specifies that the principal care provider of a person is the individual who is primarily responsible for providing support or care to the person. An authorised medical officer of a mental health facility or a director of community treatment may determine who is the principal care provider of a person for the purposes of complying with requirements to give notice and other requirements. Requirements relating to principal care providers need not be complied with if to do so may put the principal care provider or the person being cared for at risk of serious harm.

Schedule 1 [45] extends to the principal care provider of a person who is a patient or a person detained in a mental health facility the right to receive information about medication administered to the person. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

Schedule 1 [47] requires an authorised medical officer of a mental health facility to take all reasonably practicable steps to notify the principal care provider of a person within 24 hours after the person is detained in the facility. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

Schedule 1 [48] requires an authorised medical officer of a mental health facility to take all reasonably practicable steps to notify the principal care provider of an assessable person of a proposed mental health inquiry. The amendment also updates a reference to a primary carer so that it refers to a designated carer. **Schedule 1 [49]** makes a consequential amendment.

Schedule 1 [50] requires an authorised medical officer of a mental health facility to take all reasonably practicable steps to notify the principal care provider of a patient or person detained in the facility of certain events relating to the patient or person. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

Schedule 1 [51] requires an authorised medical officer of a mental health facility to take all reasonably practicable steps to ensure that the principal care provider of a person is consulted in relation to the person's discharge and subsequent treatment or actions. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

Schedule 1 [52] requires an authorised medical officer of a mental health facility, while planning the discharge of a person, to take all reasonably practicable steps to consult with agencies providing relevant services to the person and the principal care provider. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

Schedule 1 [53] requires an authorised medical officer of a mental health facility to take all reasonably practicable steps to ensure that the person and the principal care provider of a person who is discharged from the facility are provided with appropriate information as to follow-up care. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

Schedule 1 [71] extends the advocacy role of official visitors to matters raised by the principal care provider of a patient. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

Schedule 1 [72] enables the principal care provider of a patient or other person treated at a mental health facility to request that an official visitor visit the facility. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

Schedule 1 [73]–[75] enable the principal care provider of a patient or person detained in a mental health facility or of an affected person under a community treatment order to notify the medical superintendent of the facility or the director of community treatment that the principal care provider wishes to see an official visitor and requires an official visitor to be informed of that wish within 2 days. The amendments also update references to a primary carer so that they refer to a designated carer.

Schedule 1 [80] prevents a disclosure of information obtained in connection with mental health legislation to a principal care provider of a person from being a prohibited disclosure if it relates to the care or treatment of the person. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

Schedule 1 [86], [91], [93] and [94] update the mental health certificate form and the statement of rights for persons detained in mental health facilities to reflect the amendments made by the proposed Act to the rights and responsibilities of designated carers and principal care providers.

Detention in mental health facilities

Schedule 1 [7] requires voluntary patients in mental health facilities to be reviewed by the Tribunal at least once every 12 months if they have been a patient (either voluntary or involuntary) in the mental health facility for a continuous period of more than 12 months.

Schedule 1 [8] requires the Tribunal to consider whether a voluntary patient is likely to benefit from further care or treatment as a voluntary patient when it reviews the patient.

Schedule 1 [9] enables a voluntary patient in a mental health facility to be detained for up to 2 hours to enable an authorised medical officer to determine whether to take action to detain the person in the mental health facility.

Schedule 1 [13] enables a medical practitioner or accredited person to examine or observe a person by using an audio visual link for the purpose of completing a mental health certificate, if it is not reasonably practicable for the person to be personally examined or observed by a medical practitioner or accredited person. **Schedule 1 [81]** makes a consequential amendment.

Schedule 1 [15] enables a medical practitioner to examine or observe a person by using an audio visual link, or an accredited person to personally examine a person, for the purpose of determining whether the person is a mentally ill person or mentally disordered person who should be detained in a mental health facility, if it is not reasonably practicable for the person to be personally examined or observed by an authorised medical officer or other medical practitioner. **Schedule 1 [16], [17], [85] and [87]** make consequential amendments.

Schedule 1 [18] extends from one hour to 2 hours the period for which a person who has been brought to a mental health facility by a police officer, and who is not to be further detained, may be kept at the facility pending the person's apprehension by a police officer.

Schedule 1 [22] provides, in addition to other actions that may already be taken after a mental health inquiry, that a person may be discharged into the care of a designated carer or the principal care provider of the person.

Schedule 1 [23] provides, in addition to other actions that may already be taken by the Tribunal after a review of an involuntary patient, that the patient may be discharged into the care of a designated carer or the principal care provider of the patient.

Schedule 1 [26] provides that the Tribunal may defer the discharge of a person on a successful appeal against a refusal to discharge the person for a period of up to 14 days.

Schedule 1 [44] requires an authorised medical officer, other medical practitioner or accredited person to consider (if reasonably practicable) information provided by a designated carer,

principal care provider, relative, friend, treating health professional or person who has brought someone to a mental health facility when determining whether a person is a mentally ill person or a mentally disordered person or should be discharged.

Community treatment orders

Schedule 1 [27] makes it clear that an application for a community treatment order may be made in proceedings for an appeal against a refusal of an application to discharge an involuntary patient or person detained in a mental health facility.

Schedule 1 [28] removes the requirement for 14 days notice of an application for a community treatment order for a person who is not detained in a mental health facility, if the person is already the subject of a community treatment order or the Tribunal decides that it is in the best interests of the patient that the application be heard earlier.

Schedule 1 [29] enables the Tribunal to defer for up to 14 days the discharge from a mental health facility of a person who is made subject to a community treatment order. **Schedule 1 [24]** makes a consequential amendment.

Schedule 1 [30] extends to the principal care provider of a person who is subject to a community treatment order the right to request information about medication administered to the person. The amendment also updates a reference to a primary carer so that it refers to a designated carer.

Schedule 1 [31] requires the director of community treatment of a declared mental health facility to consult the affected person, any designated carer or principal care provider of a person subject to a community treatment order before revoking the order and to notify the Tribunal of a revocation or if no further application for an order will be made.

Schedule 1 [32] requires the director of community treatment of a declared mental health facility to notify any designated carer or principal care provider of a person subject to a community treatment order of the order and if the order is varied or revoked or an application is made for a further order.

Electro convulsive therapy

Schedule 1 [55] excludes persons under the age of 16 years from the category of persons who can receive ECT on the basis of giving informed consent and a medical certificate.

Schedule 1 [56] requires that an ECT determination be given by the Tribunal after it holds an ECT inquiry before a person under the age of 16 years can receive ECT.

Schedule 1 [57] provides that ECT may be administered to a person under the age of 16 years in accordance with an ECT determination made by the Tribunal at an ECT administration inquiry.

Schedule 1 [59] provides that at least one of the 2 medical certificates required before an authorised medical officer may apply for an ECT administration inquiry about a person under the age of 16 years is to be a certificate given by a psychiatrist with expertise in the treatment of children or adolescents. **Schedule 1 [58]** makes a consequential amendment.

Schedule 1 [61] provides that the Tribunal is, on an ECT administration inquiry, to determine whether or not an ECT determination should be made in relation to a person under the age of 16 years. **Schedule 1 [60]** makes a consequential amendment.

Schedule 1 [64] sets out the elements of an ECT determination for a person under the age of 16 years. **Schedule 1 [62] and [63]** make consequential amendments.

Schedule 1 [65] requires the Tribunal to consider the views (if known) of any designated carer, principal care provider or parent of a person who is under the age of 16 years when holding an inquiry into ECT treatment for the person.

Schedule 1 [66] enables the President of the Tribunal to inspect at any time the register kept by a mental health facility relating to ECT treatments.

Other treatments

Schedule 1 [68] removes the ability of the Secretary of the Ministry of Health to consent to the performance of a surgical operation on an involuntary patient in circumstances where the patient

is capable of giving consent but refuses to give that consent or neither gives nor refuses to give that consent. It also removes voluntary patients from the categories of persons who are incapable of consenting and in respect of whom consent may be given to a surgical procedure by the Secretary. The *Guardianship Act 1987* will instead apply in such a case.

Schedule 1 [70] removes the ability of the Tribunal to consent to the performance of a surgical operation on a voluntary patient in circumstances where the patient is incapable of giving consent. The *Guardianship Act 1987* will instead apply in such a case.

Other amendments

Schedule 1 [1] and [5] update references to the Director-General of the Department of Health and the Department of Health.

Schedule 1 [10], [78] and [84] update references to developmental disability of mind.

Schedule 1 [46] requires voluntary patients to be given an oral explanation and a written statement of their legal rights and other entitlements as soon as practicable after becoming voluntary patients. **Schedule 1 [95]** sets out the form of the written statement.

Schedule 1 [54] updates references to electrodes for the purposes of the definition of *psychosurgery* in relation to prohibited treatments.

Schedule 1 [76] enables a mentally ill person or mentally disordered person who is in a health facility other than a mental health facility because the person requires treatment for another illness or condition to request to see an official visitor. The Principal official visitor is to arrange for the visit to be made as soon as practicable.

Schedule 1 [77] removes the requirement for the annual report of the Tribunal to report on the number of persons detained as involuntary patients for 3 months or less.

Schedule 1 [79] requires a person who is under the age of 16 years to be represented before the Tribunal by an Australian legal practitioner or another representative chosen by the person and approved by the Tribunal.

Schedule 1 [82] revises a provision of the mental health certificate to better reflect the provisions of the Principal Act.

Schedule 1 [88] updates a heading as a result of the insertion of a statement of rights for voluntary patients.

Schedule 1 [89] inserts information about appeal and discharge rights into the statement of rights for involuntary patients or persons who are detained in a mental health facility.

Schedule 1 [90] inserts information about operations into the statement of rights for involuntary patients or persons who are detained in a mental health facility.

Schedule 1 [92] inserts information about the right to see an official visitor into the statement of rights for involuntary patients or persons who are detained in a mental health facility.

Schedule 1 [96] extends the maximum period for which a person may be appointed as an official visitor from 3 years to 4 years.

Schedule 1 [97] inserts savings and transitional provisions consequent on the enactment of the proposed Act.

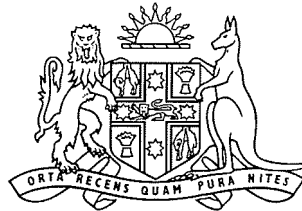


New South Wales

Mental Health Amendment (Statutory Review) Bill 2014

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New South Wales

Mental Health Amendment (Statutory Review) Bill 2014

No. , 2014

A Bill for

An Act to amend the *Mental Health Act 2007* with respect to the admission, discharge, care, treatment and review of patients and other persons; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Mental Health Amendment (Statutory Review) Act 2014</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5

Schedule 1	Amendment of Mental Health Act 2007 No 8	1
[1] Whole Act (except the definition of “Director-General” in section 4 (1) and Schedule 6)		2
Omit “Director-General” and “Department of Health” wherever occurring.		3
Insert instead “Secretary” and “Ministry of Health”, respectively.		4
[2] Section 3 Objects of Act		5
Omit section 3 (a). Insert instead:		6
(a) to provide for the care and treatment of, and to promote the recovery of, persons who are mentally ill or mentally disordered, and		7
[3] Section 3 (b) and (e)		8
Omit “, treatment and control” wherever occurring. Insert instead “and treatment”.		9
[4] Section 3 (d)		10
Insert “and, where necessary, to provide for treatment for their own protection or the protection of others” after “appropriate care”.		11
[5] Section 4 Definitions		12
Omit the definition of <i>Director-General</i> from section 4 (1).		13
Insert in alphabetical order:		14
<i>Secretary</i> means the Secretary of the Ministry of Health.		15
[6] Section 4 (1)		16
Omit the definition of <i>primary carer</i> . Insert in alphabetical order:		17
<i>designated carer</i> —see section 71.		18
<i>principal care provider</i> —see section 72A.		19
[7] Section 9 Review of voluntary patients		20
Omit “as a voluntary patient” from section 9 (1).		21
Insert instead “whether in a voluntary or involuntary capacity”.		22
[8] Section 9 (2)		23
Insert “and whether the patient is likely to benefit from further care or treatment as a voluntary patient” after “voluntary patient”.		24
[9] Section 10 Detention of voluntary patients in mental health facilities		25
Insert after section 10 (2):		26
(3) A voluntary patient in a mental health facility may be detained for a period of up to 2 hours for the purpose of enabling an authorised medical officer to exercise the officer’s functions under this section.		27
[10] Section 16 Certain words or conduct may not indicate mental illness or disorder		28
Omit “developmental disability of mind” from section 16 (1) (j).		29
Insert instead “an intellectual disability or developmental disability”.		30

[11] Section 18 When a person may be detained in mental health facility	1
Omit “primary carer,” from section 18 (1) (g).	2
Insert instead “designated carer, the principal care provider, a”.	3
[12] Section 19 Detention on certificate of medical practitioner or accredited person	4
Omit “the primary carer” from section 19 (2) (d).	5
Insert instead “a designated carer, the principal care provider”.	6
[13] Section 19A	7
Insert after section 19:	8
19A Examination by audio visual link for purposes of mental health certificate	9
(1) A medical practitioner or accredited person may examine or observe a person’s condition using an audio visual link for the purpose of determining whether to issue a mental health certificate if it is not reasonably practicable for a medical practitioner or accredited person to personally examine or observe the person for that purpose.	10 11 12 13 14
(2) A medical practitioner or accredited person must not carry out an examination or observation using an audio visual link unless the medical practitioner or accredited person is satisfied that the examination or observation can be carried out in those circumstances with sufficient skill and care so as to form the required opinion about the person.	15 16 17 18 19
(3) The regulations may make provision for or with respect to the audio visual link technology that may be used for the purposes of this section and the medical practitioners who may examine or observe a person for the purposes of this section.	20 21 22 23
[14] Section 26 Detention on request of designated carer, principal care provider, relative or friend	24 25
Omit “the primary carer” from section 26 (1).	26
Insert instead “a designated carer, the principal care provider”.	27
[15] Section 27A	28
Insert after section 27:	29
27A Examinations by medical practitioners or accredited persons for purposes of detention	30 31
(1) If it is not reasonably practicable for an authorised medical officer of a mental health facility or other medical practitioner to personally examine a person or observe the person’s condition for the purpose of determining under section 27 whether the person is a mentally ill person or a mentally disordered person, the person may be examined or observed for that purpose:	32 33 34 35 36
(a) by a medical practitioner at another place using an audio visual link, or	37
(b) in person by an accredited person authorised by the medical superintendent of the mental health facility to do so.	38 39
(2) The examination or observation must be carried out by a medical practitioner who is a psychiatrist if that is a requirement of section 27.	40 41
(3) A medical practitioner must not carry out an examination or observation using an audio visual link unless the medical practitioner is satisfied that the	42 43

	examination or observation can be carried out in those circumstances with sufficient skill and care so as to form the required opinion about the person.	1 2
(4)	A medical practitioner who is not a psychiatrist, or an accredited person, who examines or observes a person under this section must, if it is reasonably practicable to do so, seek the advice of a psychiatrist before making a determination as to whether the person is a mentally ill person or a mentally disordered person. The psychiatrist is not required to examine or observe the person.	3 4 5 6 7 8
(5)	The regulations may make provision for or with respect to the audio visual link technology that may be used for the purposes of this section and the medical practitioners who may examine or observe a person for the purposes of this section.	9 10 11 12
[16]	Section 28 Obligations of examining medical practitioners and accredited persons	13
	Insert “or accredited person” after “medical practitioner” wherever occurring.	14
[17]	Section 28 (2)	15
	Insert “or 27A” after “section 27”.	16
[18]	Section 32 Detention on order of Magistrate or bail officer	17
	Omit “one hour” from section 32 (4) (a). Insert instead “2 hours”.	18
[19]	Section 32 (4) (c)	19
	Omit “the person’s primary carer”.	20
	Insert instead “a designated carer or the principal care provider of the person”.	21
[20]	Section 34 Mental health inquiries to be held	22
	Omit “primary carers” from the note to section 34 (1).	23
	Insert instead “designated carers and the principal care provider”.	24
[21]	Section 34 (2)	25
	Omit “The primary carer”.	26
	Insert instead “Any designated carer or the principal care provider”.	27
[22]	Section 35 Purpose and findings of mental health inquiries	28
	Omit “the person’s primary carer” from section 35 (5) (a).	29
	Insert instead “a designated carer or the principal care provider of the person”.	30
[23]	Section 38 Purpose and findings of reviews of involuntary patients	31
	Omit section 38 (5). Insert instead:	32
(5)	In any other case that the Tribunal determines that a patient is a mentally ill person, it must make an order that the patient be discharged from the mental health facility in which the patient is detained and may make any of the following orders:	33 34 35 36
(a)	an order that the patient be discharged into the care of a designated carer or the principal care provider of the person,	37 38
(b)	a community treatment order.	39

[24] Section 41 Discharge on making of community treatment order	1
Insert after section 41 (2):	2
(3) This section is subject to any order made under section 53 deferring the discharge of an involuntary patient.	3 4
[25] Section 43 Discharge of involuntary patients on application of designated carer or principal care provider	5 6
Omit “The primary carer” from section 43 (1).	7
Insert instead “Any designated carer or the principal care provider”.	8
[26] Section 44 Appeals against discharge refusals	9
Insert after section 44 (5):	10
(6) The Tribunal may defer the operation of an order under this section for the discharge of a person for a period of up to 14 days, if the Tribunal decides it is in the best interests of the person to do so.	11 12 13
Note. The Tribunal may, on application, make a community treatment order for an involuntary patient or detained person who is the subject of an appeal (see section 51).	14 15
[27] Section 51 Community treatment orders	16
Insert after section 51 (5):	17
(6) Without limiting subsection (5) (c), an application for a community treatment order may be made, and determined by the Tribunal, in the same proceedings as an appeal under section 44.	18 19 20
[28] Section 52 Notice of applications	21
Omit section 52 (4). Insert instead:	22
(4) Subsection (3) does not apply:	23
(a) to an application for a further community treatment order in respect of an affected person who was the subject of a current community treatment order when the notice was given, or	24 25 26
(b) if the Tribunal decides it is in the best interests of the affected person that the application be heard earlier than 14 days after the notice is given.	27 28 29
[29] Section 53 Determination of applications for community treatment orders	30
Insert after section 53 (7):	31
(8) The Tribunal may order that the discharge of an involuntary patient for whom a community treatment order is made be deferred for a period of up to 14 days, if the Tribunal thinks it is in the best interests of the patient to do so.	32 33 34
[30] Section 57 Duties and functions of affected person and mental health facility	35
Omit “the primary carer” from section 57 (4) (b).	36
Insert instead “any designated carer or the principal care provider”.	37
[31] Section 66 Revocation by director of community treatment	38
Insert at the end of the section:	39
(2) Before revoking a community treatment order, the director must consult the affected person and, if it is reasonably practicable to do so, any designated	40 41

	carer and the principal care provider of the affected person (if the principal care provider is not a designated carer).	1 2
	(3) The director must notify the Tribunal in writing if the director revokes a community treatment order or decides not to apply to the Tribunal for a further order.	3 4 5
[32]	Section 66A	6
	Insert after section 66:	7
	66A Notifications	8
	The director of community treatment of the declared mental health facility implementing a community treatment order must take all reasonably practicable steps to notify any designated carer and the principal care provider of the affected person (if the principal care provider is not a designated carer) of the order and if any of the following events occur:	9 10 11 12 13
	(a) the order is varied or revoked by the Tribunal or director,	14
	(b) an application is made for a further order or the director decides not to apply for a further order.	15 16
[33]	Chapter 4, Part 1, heading	17
	Omit “and primary carers”.	18
	Insert instead “, designated carers and principal care providers”.	19
[34]	Section 68 Principles for care and treatment	20
	Insert “and be supported to pursue their own recovery” after “treatment” where thirdly occurring in section 68 (e).	21 22
[35]	Section 68 (g)–(g2)	23
	Omit section 68 (g). Insert instead:	24
	(g) any special needs of people with a mental illness or mental disorder should be recognised, including needs related to age, gender, religion, culture, language, disability or sexuality,	25 26 27
	(g1) people under the age of 18 years with a mental illness or mental disorder should receive developmentally appropriate services,	28 29
	(g2) the cultural and spiritual beliefs and practices of people with a mental illness or mental disorder who are Aboriginal persons or Torres Strait Islanders should be recognised,	30 31 32
[36]	Section 68 (h)	33
	Omit “plans for ongoing care”.	34
	Insert instead “recovery plans and to consider their views and expressed wishes in that development”.	35 36
[37]	Section 68 (h1)	37
	Insert after section 68 (h):	38
	(h1) every effort that is reasonably practicable should be made to obtain the consent of people with a mental illness or mental disorder when developing treatment plans and recovery plans for their care, to monitor their capacity to consent and to support people who lack that capacity to understand treatment plans and recovery plans,	39 40 41 42 43

[38] Section 68 (j)	1
Omit the paragraph. Insert instead:	2
(j) the role of carers for people with a mental illness or mental disorder and their rights under this Act to be kept informed, to be involved and to have information provided by them considered, should be given effect.	3 4 5
[39] Section 71 Designated carers	6
Omit “ <i>primary carer</i> ” from section 71 (1). Insert instead “ <i>designated carer</i> ”.	7
[40] Section 71 (1) (c)	8
Omit “the person nominated by the patient as the primary carer”.	9
Insert instead “a person nominated by the patient as a designated carer”.	10
[41] Section 71 (1) (d) (ii)	11
Omit “person”. Insert instead “individual”.	12
[42] Section 71 (2)	13
Insert in alphabetical order:	14
<i>relative</i> of a patient who is an Aboriginal person or a Torres Strait Islander includes a person who is part of the extended family or kin of the patient according to the indigenous kinship system of the patient’s culture.	15 16 17
[43] Section 72 Nomination of designated carers	18
Omit section 72 (1). Insert instead:	19
(1) A person may nominate up to 2 persons to be the person’s designated carers for the purposes of this Act.	20 21
[44] Sections 72A and 72B	22
Insert after section 72:	23
72A Principal care providers	24
(1) The <i>principal care provider</i> of a person for the purposes of this Act is the individual who is primarily responsible for providing support or care to the person (other than wholly or substantially on a commercial basis).	25 26 27
(2) An authorised medical officer at a mental health facility or a director of community treatment may, for the purposes of complying with a provision of this Act or the regulations, determine who is the principal care provider of a person.	28 29 30 31
(3) The authorised medical officer must not determine that a person is the principal care provider of another person if the person is excluded from being given notice or information about the other person under this Act.	32 33 34
(4) An authorised medical officer or a director of community treatment is not required to give effect to a requirement relating to a principal care provider of a person under this Act or the regulations if the officer or director reasonably believes that to do so may put the person or the principal care provider at risk of serious harm.	35 36 37 38 39
(5) A principal care provider of a person may also be a designated carer of the person.	40 41

72B	Requirement to consider information provided by other persons about patients or detained persons when making detention or discharge decisions	1 2
	An authorised medical officer or other medical practitioner or accredited person who examines an involuntary patient or person detained in a mental health facility for the purposes of determining whether the person is a mentally ill person or a mentally disordered person or whether to discharge the patient or person is to consider any information provided by the following persons, if it is reasonably practicable to do so:	3 4 5 6 7 8
	(a) any designated carer, principal care provider, relative or friend of the patient or person,	9 10
	(b) any medical practitioner or other health professional who has treated the patient or person in relation to a relevant matter,	11 12
	(c) any person who brought the patient or person to the mental health facility.	13 14
[45]	Section 73 Information about medication	15
	Omit “the primary carer” from section 73 (2) (b).	16
	Insert instead “any designated carer or the principal care provider”.	17
[46]	Section 74A	18
	Insert after section 74:	19
74A	Information to be given to voluntary patients	20
	(1) An authorised medical officer of a mental health facility must give a person who becomes a voluntary patient of the facility an oral explanation and a written statement of the person’s legal rights and other entitlements under this Act.	21 22 23 24
	(2) The explanation and statement must be given as soon as practicable after the person becomes a voluntary patient of the mental health facility, whether or not the patient was a patient or detained in the facility immediately before becoming a voluntary patient.	25 26 27 28
	(3) The written statement is to be in the form set out in Schedule 3A.	29
	(4) If the authorised medical officer is of the opinion that the person is not capable of understanding the explanation or statement when it is first given, another explanation or statement must be given to the person if the person becomes capable of understanding the explanation or statement.	30 31 32 33
	(5) The authorised medical officer must, if the person is unable to communicate adequately in English but is able to communicate adequately in another language, arrange for the oral explanation to be given in that other language.	34 35 36
[47]	Section 75 Notification to carers of initial detention	37
	Omit “the primary carer” from section 75 (1).	38
	Insert instead “any designated carer and the principal care provider (if the principal care provider is not a designated carer)”.	39 40
[48]	Section 76 Notification of mental health inquiries	41
	Omit “the person’s primary carer” from section 76 (1) (b).	42
	Insert instead “any designated carer and the principal care provider of the person (if the principal care provider is not a designated carer)”.	43 44

[49] Section 76 (3)	1
Omit “the primary carer”.	2
Insert instead “any designated carer and the principal care provider (if the principal care provider is not a designated carer)”.	3 4
[50] Section 78 Notifications to designated carers and principal care providers of events affecting patients or detained persons	5 6
Omit “the primary carer” from section 78 (1).	7
Insert instead “any designated carer and the principal care provider (if the principal care provider is not a designated carer)”.	8 9
[51] Section 79 Discharge and other planning	10
Omit “the primary carer” from section 79 (1).	11
Insert instead “any designated carer and the principal care provider (if the principal care provider is not a designated carer)”.	12 13
[52] Section 79 (2)	14
Omit “primary carer”.	15
Insert instead “designated carer and the principal care provider (if the principal care provider is not a designated carer)”.	16 17
[53] Section 79 (3)	18
Omit “the patient’s or person’s primary carer”.	19
Insert instead “any designated carer and the principal care provider (if the principal care provider is not a designated carer) of the patient or person”.	20 21
[54] Section 83 Prohibited treatments	22
Omit “intracerebral electrodes” wherever occurring in the definition of <i>psychosurgery</i> in section 83 (2).	23 24
Insert instead “electrodes within the brain”.	25
[55] Section 89 When electro convulsive therapy may be administered	26
Insert “or a person who is under the age of 16 years” after “involuntary patient” wherever occurring in section 89 (a) and (b).	27 28
[56] Section 93 When electro convulsive therapy may be administered to persons other than involuntary patients or persons under 16	29 30
Insert “or a person who is under the age of 16 years” after “involuntary patient” in section 93 (1).	31 32
[57] Section 94 When electro convulsive therapy may be administered to involuntary patients or persons under 16	33 34
Insert “or a person who is under the age of 16 years” after “involuntary patient” in section 94 (1).	35 36
[58] Section 94 (2)	37
Insert “(other than a patient who is under the age of 16 years)” after “involuntary patient”.	38

[59] Section 94 (2A)	1
Insert after section 94 (2):	2
(2A) An authorised medical officer may apply to the Tribunal for an ECT administration inquiry about a person who is under the age of 16 years (including an involuntary patient) if a certificate is given under this section by at least 2 medical practitioners, at least one of whom is a psychiatrist with expertise in the treatment of children or adolescents.	3 4 5 6 7
[60] Section 96 Purpose and findings of ECT inquiries	8
Insert “or persons under 16” after “patients” wherever occurring in the headings to section 96 (2), (4) and (5).	9 10
[61] Section 96 (2)	11
Insert “or person under the age of 16 years” after “patient”.	12
[62] Section 96 (3), heading	13
Insert “(other than persons under 16)” after “patients”.	14
[63] Section 96 (3)	15
Insert “for an involuntary patient (other than a person under the age of 16 years)” after “ECT determination”.	16 17
[64] Section 96 (3A)	18
Insert after section 96 (3):	19
(3A) ECT determinations that enable treatment of persons under 16	20
An ECT determination for a person under the age of 16 years (including an involuntary patient) is a determination:	21 22
(a) in the case of an involuntary patient or other person, that:	23
(i) the person is capable of giving informed consent to the electro convulsive therapy and has given that consent, and	24 25
(ii) after considering the medical opinions and other information placed before it, the Tribunal is satisfied that the electro convulsive therapy is a reasonable and proper treatment and is necessary or desirable for the safety or welfare of the person, or	26 27 28 29
(b) in the case of an involuntary patient, that:	30
(i) the patient is incapable of giving informed consent or is capable of giving informed consent to the electro convulsive therapy but has refused, or has neither consented nor refused, to have the treatment administered, and	31 32 33 34
(ii) after considering the medical opinions and other information placed before it, the Tribunal is satisfied that the electro convulsive therapy is a reasonable and proper treatment and is necessary or desirable for the safety or welfare of the person.	35 36 37 38
[65] Section 96 (6) (d1)	39
Insert after section 96 (6) (d):	40
(d1) in the case of an ECT administration inquiry for a person who is under the age of 16 years, consider the views (if known) of any designated carer, principal care provider of the person or parent (if not a designated carer or the principal care provider),	41 42 43 44

[66] Section 97 Electro convulsive therapy register	1
Insert “the President,” after “Tribunal,” in section 97 (5).	2
[67] Section 100 Secretary may consent to surgery	3
Omit “the primary carer” from section 100 (2). Insert instead “a designated carer”.	4
[68] Section 100 (3)	5
Omit section 100 (3) and (4). Insert instead:	6
(3) On an application, the Secretary may consent to the performance of a surgical operation on an involuntary patient if of the opinion that:	7
(a) the patient is incapable of giving consent to the operation, and	8
(b) it is desirable, having regard to the interests of the patient, to perform the surgical operation on the patient.	9
[69] Section 101 Tribunal may consent to surgery	12
Omit “the primary carer of the person does not agree” from section 101 (2).	13
Insert instead “none of the designated carers of the person agree”.	14
[70] Section 101 (4)	15
Omit “a voluntary patient or”.	16
[71] Section 129 Official visitors	17
Omit “the primary carer” from section 129 (3) (b).	18
Insert instead “a designated carer or principal care provider”.	19
[72] Section 131 Inspections of mental health facilities by official visitors	20
Omit “the primary carer” from section 131 (6).	21
Insert instead “a designated carer or principal care provider”.	22
[73] Section 134 Request by patient or other person at mental health facility to see official visitor	23
Omit “the primary carer” from section 134 (1).	24
Insert instead “a designated carer or principal care provider”.	25
[74] Section 134 (1)	26
Insert “or care provider” after “or carer”.	27
[75] Section 134 (2)	28
Omit “or primary carer’s”.	29
Insert instead “or designated carer’s or principal care provider’s”.	30
[76] Section 134A	31
Insert after section 134:	32
134A Request by patient or other person at other health facility to see official visitor	33
(1) A person referred to in section 18 (2) who is detained in a health facility other than a mental health facility, or a designated carer or the principal care	34
	35
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	provider of the person, may notify the medical superintendent of the health facility that the person, carer or care provider desires to see an official visitor.	1 2
(2)	The medical superintendent must inform the Principal official visitor of the person's or carer's or care provider's desire to see an official visitor not later than 2 days after receiving the notification.	3 4 5
(3)	The Principal official visitor is to arrange for an official visitor to visit the health facility as soon as reasonably practicable.	6 7
(4)	The regulations may make provision for or with respect to the following:	8
(a)	the functions of an official visitor who visits a health facility under this section,	9 10
(b)	the obligations of the medical superintendent of a health facility in respect of a visit under this section.	11 12
[77]	Section 147 Annual report	13
	Omit section 147 (2) (d). Insert instead:	14
	(d) the number of persons detained as involuntary patients.	15
[78]	Section 152 Legal representation of mentally ill persons and other persons	16
	Omit "a developmental disability of mind" wherever occurring.	17
	Insert instead "an intellectual disability or developmental disability".	18
[79]	Section 154 Rights of appearance and representation	19
	Insert after section 154 (3):	20
(4)	A person who is under the age of 16 years who has a matter before the Tribunal must be represented by an Australian legal practitioner or, with the approval of the Tribunal, by another person of his or her choice, unless the Tribunal decides that it is in the best interests of the person to proceed without the person being so represented.	21 22 23 24 25
[80]	Section 189 Disclosure of information	26
	Omit "primary carer" from section 189 (1) (c).	27
	Insert instead "designated carer or principal care provider".	28
[81]	Schedule 1 Medical certificate as to examination or observation of person	29
	Omit "personally" wherever occurring.	30
	Insert instead "personally/by audio visual link".	31
[82]	Schedule 1, item 1	32
	Omit the item. Insert instead:	33
1.	I am of the opinion that the person examined/observed by me is [<i>strike out alternative that is not applicable</i>]:	34 35
(a)	a mentally ill person suffering from a mental illness and that owing to that illness there are reasonable grounds for believing that care, treatment or control of the person is necessary for the person's own protection from serious harm or for the protection of others from serious harm,	36 37 38 39 40

	(b) a mentally disordered person whose behaviour for the time being is so irrational as to justify a conclusion on reasonable grounds that temporary care, treatment or control of the person is necessary for the person's own protection from serious harm or for the protection of others from serious harm.	1 2 3 4 5
[83]	Schedule 1, item 6	6
	Omit "the primary carer".	7
	Insert instead "a designated carer or the principal care provider".	8
[84]	Schedule 1, note 1	9
	Omit "developmental disability of mind".	10
	Insert instead "an intellectual disability or developmental disability".	11
[85]	Schedule 1, note 2	12
	Omit "personal".	13
[86]	Schedule 1, note 4	14
	Omit the note. Insert instead:	15
4	In the <i>Mental Health Act 2007</i> , <i>designated carer</i> and <i>principal care provider</i> are defined as follows:	16 17
71	Designated carers	18
(1)	The <i>designated carer</i> of a person (the <i>patient</i>) for the purposes of this Act is:	19 20
(a)	the guardian of the patient, or	21
(b)	the parent of a patient who is a child (subject to any nomination by a patient referred to in paragraph (c)), or	22 23
(c)	if the patient is over the age of 14 years and is not a person under guardianship, a person nominated by the patient as a designated carer under this Part under a nomination that is in force, or	24 25 26
(d)	if the patient is not a patient referred to in paragraph (a) or (b) or there is no nomination in force as referred to in paragraph (c):	27 28
(i)	the spouse of the patient, if any, if the relationship between the patient and the spouse is close and continuing, or	29 30
(ii)	any individual who is primarily responsible for providing support or care to the patient (other than wholly or substantially on a commercial basis), or	31 32 33
(iii)	a close friend or relative of the patient.	34
(2)	In this section:	35
	<i>close friend or relative</i> of a patient means a friend or relative of the patient who maintains both a close personal relationship with the patient through frequent personal contact and a personal interest in the patient's welfare and who does not provide support to the patient wholly or substantially on a commercial basis.	36 37 38 39 40
	<i>relative</i> of a patient who is an Aboriginal person or a Torres Strait Islander includes a person who is part of the extended family or kin of the patient according to the indigenous kinship system of the patient's culture.	41 42 43 44

72A	Principal care providers	1
(1)	The <i>principal care provider</i> of a person for the purposes of this Act is the individual who is primarily responsible for providing support or care to the person (other than wholly or substantially on a commercial basis).	2 3 4
(2)	An authorised medical officer at a mental health facility or a director of community treatment may, for the purposes of complying with a provision of this Act or the regulations, determine who is the principal care provider of a person.	5 6 7 8
(3)	The authorised medical officer must not determine that a person is the principal care provider of another person if the person is excluded from being given notice or information about the other person under this Act.	9 10 11
(4)	An authorised medical officer or a director of community treatment is not required to give effect to a requirement relating to a principal care provider of a person under this Act or the regulations if the officer or director reasonably believes that to do so may put the person or the principal care provider at risk of serious harm.	12 13 14 15 16
(5)	A principal care provider of a person may also be a designated carer of the person.	17 18
[87]	Schedule 1, note 6	19
	Insert at the end of the notes:	20
6	An examination or observation may be carried out by audio visual link by a medical practitioner or accredited person if it is not reasonably practicable for a medical practitioner or accredited person to personally examine or observe a person for the purposes of this form.	21 22 23 24
[88]	Schedule 3, heading	25
	Insert “ for persons detained in mental health facility ” after “ rights ”.	26
[89]	Schedule 3	27
	Insert “You or a person who asks for you to be let out may appeal to the Mental Health Review Tribunal against a refusal by the medical superintendent or another authorised medical officer to let you out.” at the end of the matter under the heading “ How can I get out of a mental health facility? ”.	28 29 30 31
[90]	Schedule 3	32
	Insert “You may be operated on if a person who is your designated carer and the Secretary of the Ministry of Health agree if you do not consent to the operation, but only if it is in your interests to have the operation.” at the end of the matter under the heading “ Can I be treated against my will? ”.	33 34 35 36
[91]	Schedule 3	37
	Omit “your primary carer” where firstly and lastly occurring.	38
	Insert instead “a designated carer or any other person who is your principal care provider”.	39

[92] Schedule 3	1
Insert after the matter under the heading “ Who can I ask for help? ”:	2
Can I see an official visitor?	3
You may ask any facility staff member if you can see an official visitor. Staff will arrange for a visit by an official visitor.	4 5
[93] Schedule 3	6
Omit “a person to be your primary carer”.	7
Insert instead “up to 2 people to be your designated carers, including a person who is also your principal care provider.”.	8 9
[94] Schedule 3	10
Omit “Your primary carer”.	11
Insert instead “A designated carer or any other person who is your principal care provider”.	12
[95] Schedule 3A	13
Insert after Schedule 3:	14
Schedule 3A Statement of rights for voluntary patients	15
(Section 74A (3))	16
Statement of rights	17
Your rights	18
You should read the questions and answers below to find out your rights and what may happen to you after you become a patient in a mental health facility.	19 20
What happens about my treatment at a mental health facility?	21
The medical staff must tell you about your treatment, treatment alternatives and the effects of treatment if you ask. They must also tell you about treatment plans and recovery plans for your ongoing care and get your agreement to them, if you are able to agree.	22 23 24
You can accept or refuse any treatment and you can stop agreeing to a treatment at any time. You must not be given excessive or inappropriate medication.	25 26
Who else may be at a mental health facility?	27
Other patients in the mental health facility may be very ill and being kept and treated in the mental health facility without their agreement.	28 29
How can I get out of a mental health facility?	30
You can leave the mental health facility at any time but you need to tell a staff member that you wish to leave. You may also be discharged by the medical superintendent or another authorised medical officer if they think you are not likely to get a benefit from more care or treatment as a patient.	31 32 33

When can I be kept in a mental health facility against my will?

You can be kept in a mental health facility against your will if you are certified by the facility doctor as a mentally ill person or a mentally disordered person. You may be kept for up to 2 hours against your will so that the facility doctor may see you to decide whether to certify you.

A mentally ill person is someone who has a mental illness and who needs to be kept in a mental health facility for their own protection or to protect other people. A mentally disordered person is someone whose behaviour shows that they need to be kept in a mental health facility for a short time for their own protection or to protect other people.

The facility cannot continue to keep you against your will unless at least one other doctor also finds that you are a mentally ill person or a mentally disordered person. At least one of the doctors who sees you must be a psychiatrist.

Is there any review of decisions about me or of my case?

If a mental health facility doctor who is not the medical superintendent refuses to admit you as a voluntary patient or decides to discharge you from the facility, you can ask the medical superintendent of the facility to review that decision.

If you are a patient in a mental health facility for more than 12 months, the Mental Health Review Tribunal will review your case and also find out whether you have agreed to stay as a patient. The Tribunal may order you to be discharged after reviewing your case.

Can I be given electro convulsive therapy (ECT) against my will?

No.

Who can I ask for help?

You may ask any facility staff member, social worker, doctor, official visitor, chaplain, your own lawyer or the Mental Health Advocacy Service for help. The Mental Health Advocacy Service telephone number is:

(Note. Appropriate telephone numbers should be included.)

Can I see an official visitor?

You may ask any facility staff member if you can see an official visitor. Staff will arrange for a visit by an official visitor.

Can I ask a friend or relative to act for me?

You may nominate up to 2 people to be your designated carers, including a person who is also your principal care provider, while you are in a mental health facility. A designated carer or your principal care provider may ask for information on your behalf and will be informed if you are kept in a mental health facility, transferred or discharged and of proposed special mental health treatments. You and a designated carer or any other person who is your principal care provider also have the right to be given information about follow-up care if you are discharged.

[96] Schedule 4 Provisions relating to Principal official visitor and official visitors

Omit “3 years” from clause 2. Insert instead “4 years”.

[97] Schedule 6 Savings, transitional and other provisions	1
Insert at the end of the Schedule with appropriate Part and clause numbering:	2
Part Provisions consequent on enactment of Mental Health Amendment (Statutory Review) Act 2014	3
	4
Designated carers	5
A person who was the nominated primary carer for a person immediately before the amendment of section 71 by the <i>Mental Health Amendment (Statutory Review) Act 2014</i> is taken to be the designated carer of that person for the purposes of this Act until the nomination is revoked or otherwise ceases to be in force under this Act.	6
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