

# Plain Language Guide

Mental Health Act 2009



Government  
of South Australia

SA Health

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## What Is The Mental Health Act?

The Mental Health Act is a law governing the treatment, care and rehabilitation of people with serious mental illness in South Australia.

## What Is The Purpose Of The Mental Health Act?

The purpose of the Mental Health Act is to:

- > Ensure the accessibility and delivery of specialist treatment, care, rehabilitation and support services for people with serious mental illness
- > Protect the rights and liberty of people with a serious mental illness and ensure that their dignity and self-respect is retained, as far as is consistent with their protection, the protection of the public and the proper delivery of services
- > Facilitate a sustained and respectful rehabilitation and recovery where possible
- > Allow orders for community treatment or detention and treatment to be made when required.

## What Are The Guiding Principles Of The Mental Health Act?

The Mental Health Act adheres to the principles that mental health service provision should:

- > Be designed to bring about the best therapeutic outcomes for patients, and where possible, their recovery and participation in community life
- > Be provided on a voluntary basis where possible
- > Place as little restriction as possible on the rights and freedom of a person with serious mental illness while meeting public and patient safety and service delivery requirements, and provide services as near as practicable to where patients, families or carers reside
- > Be delivered through comprehensive treatment and care plans developed in partnership with relevant service providers, patients of all ages, carers and additional support persons
- > Take into account the differing developmental stages of children and young people and ensure that they are cared for and treated separately from other patients
- > Take into account the needs of the aged
- > Take into account the cultural and linguistic diversity of patients
- > Take into account Aboriginal and Torres Strait Islander descent, including traditional beliefs and practices, and where appropriate, involve collaboration with health workers and traditional healers from Aboriginal communities and Torres Strait Islander communities
- > Ensure a regular medical examination of the mental and physical health of a patient, and regular medical review of any order applying to the patient
- > Ensure that the rights, welfare and safety of children and other dependants of the patient are considered and protected
- > Ensure that medication is used only for therapeutic purposes or for safety reasons, and mechanical body restraints and seclusion are used for safety reasons and as a last resort, and not as a punishment or for the convenience of others
- > Ensure that patients and carers are provided with plain language, comprehensive, relevant and appropriate information about mental illness, any orders that apply to them, their legal rights, available treatments and services.

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## Who Does The Mental Health Act Apply To?

The Mental Health Act applies to people with a serious mental illness including:

- > **Voluntary Patients:** A voluntary patient can be admitted to a mental health service at the patient's own request and can leave at any time unless a detention and treatment order is issued.
- > **Involuntary Patients:** Patients who are unwilling to accept voluntary treatment may be placed on a community treatment order or a detention and treatment order that requires them to receive treatment.

## Does The Mental Health Act Apply to Children?

Yes. The Mental Health Act applies to children in the same way as adults, however if a child is under the age of 16, a parent or guardian of the child may exercise rights on behalf of the child. The parent or guardian must be given copies of all relevant documentation relating to the treatment, care or detention of a child. Once a child/young person reaches the age of 16, they are able to give consent to their own treatment.

## Does The Mental Health Act Apply To Medical Examinations By Audio-Visual Conference?

Yes. If it is not practicable to carry out an examination in person, a medical examination via audio-visual conference is permitted under the Mental Health Act.

## Who Is Classified As A Psychiatrist?

A psychiatrist is a medical practitioner registered as a specialist in psychiatry under the Medical Practice Act 2004.

## Who Is Classified As A Medical Practitioner?

A medical practitioner is usually referred to as a doctor or a general practitioner (GP) working in a medical practice or a hospital, and is registered on the general register under the Medical Practice Act 2004.

## Who Is Classified As An Authorised Medical Practitioner?

An authorised medical practitioner is a medical practitioner authorised by the Minister to carry out duties under the Mental Health Act eg an authorised medical practitioner may be a psychiatric registrar in the later years of training.

## Who Is Classified As An Authorised Health Professional?

An authorised health professional is a person authorised by the Minister to carry out duties under the Mental Health Act. Authorised health professionals may include registered nurses, psychologists, social workers, occupational therapists and Aboriginal health workers.

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## What Is The Role Of The Minister?

The Minister is responsible for a range of functions under the Mental Health Act, including to encourage the involvement of patients, carers and the community in the development of mental health policies and services, to develop and promote a strong and viable system of treatment and care for persons with mental illness and to develop and promote services that aim to prevent mental illness and intervene early when mental illness is evident.

## What Is The Role Of The Chief Executive?

The Chief Executive is responsible for supporting the Minister in carrying out functions under the Mental Health Act.

## What Is The Role Of The Chief Psychiatrist?

The Chief Psychiatrist is responsible for a range of functions under the Mental Health Act including the promotion of continuous improvement in the organisation and delivery of mental health services and the monitoring of the standard of psychiatric care provided in South Australia.

## What Is The Role Of The Guardianship Board?

The Guardianship Board of South Australia has the authority under the Mental Health Act to make and review certain orders for people with mental illness. Orders can be made for compulsory, community-based psychiatric treatment or for detention and treatment within an approved treatment centre. The Guardianship Board can approve applications for prescribed treatment for mental illness if effective consent cannot be given by or on behalf of the patient. The Guardianship Board also hears appeals against orders for psychiatric treatment when such orders have been made by psychiatrists or authorised medical practitioners.

## What Is Involuntary Treatment For Mental Illness?

Involuntary treatment for mental illness is treatment undertaken without the consent of the patient if that is the only way in which care and treatment can be provided.

## Under What Circumstances Can Involuntary Treatment Be Carried Out?

Involuntary treatment is typically carried out when a person has a mental illness that requires treatment and the person is deemed to pose a risk to their own safety or the safety of others without such treatment.

## What Is A Community Treatment Order?

A community treatment order allows a person with a mental illness to receive compulsory, community-based treatment for a mental illness.

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## Level 1 Community Treatment Order

A psychiatrist, an authorised medical practitioner\*, a medical practitioner or an authorised health professional may examine a person and make a level 1 community treatment order if it appears that:

- > The person has a mental illness; and
- > Because of the mental illness, the person requires treatment for their own protection from harm, or for the protection of others from harm, including harm involved in the continuation or deterioration of the person's condition; and
- > There are facilities and services available for appropriate treatment; and
- > A community treatment order is deemed the most appropriate and least restrictive course of action in ensuring suitable treatment of the mental illness.

Consideration must be given to the prospects of the person receiving all treatment necessary for the protection of the person and others on a voluntary basis.

### How Is A Level 1 Community Treatment Order Made?

A level 1 community treatment order must be made in writing by a psychiatrist, authorised medical practitioner, medical practitioner or authorised health professional, by completing the appropriate form.

If a level 1 community treatment order is issued by a person other than a psychiatrist or an authorised medical practitioner, a psychiatrist or an authorised medical practitioner must examine the patient within 24 hours of the order being issued, or as soon as practicable, to confirm, vary or revoke the order in writing.

If a level 1 community treatment order is confirmed, varied or revoked, notice must be given in writing within 1 business day by completing the appropriate form and forwarding to the Chief Psychiatrist and the Guardianship Board.

### How Long Is A Level 1 Community Treatment Order Valid?

A level 1 community treatment order is valid for a maximum of 28 days, and unless revoked, it will expire at a time fixed in the order not later than 2pm on a business day and not later than 28 days after it was made.

### Will The Patient Receive A Copy Of A Level 1 Community Treatment Order?

Yes. The psychiatrist, authorised medical practitioner, medical practitioner or authorised health professional making a level 1 community treatment order must ensure that the patient is given a copy of the order as soon as practicable.

Additionally, a psychiatrist, authorised medical practitioner, medical practitioner or authorised health professional must ensure that the patient is given a statement of rights, informing the patient of their legal rights and any other information required to be provided to the patient.

### What Happens If The Patient Is Unable To Read?

If a patient is unable to read or understand the statement of rights, the psychiatrist, authorised medical practitioner, medical practitioner or authorised health professional must ensure that alternative ways to convey the information are investigated and taken.

\* A psychiatrist or an authorised medical practitioner who examines a person must be satisfied the criteria are met before making or confirming a level 1 community treatment order.

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## Will A Guardian, Medical Agent, Relative, Carer Or Friend Receive A Copy Of A Level 1 Community Treatment Order?

Yes. The psychiatrist or authorised medical practitioner making, confirming, varying or revoking a level 1 community treatment order is required to arrange for a copy of the order and statement of rights to be given to the guardian, medical agent, relative, carer or friend of the patient as soon as possible.

The psychiatrist or authorised medical practitioner is not required to send or give a copy of the order and statement of rights:

- > To a person whose whereabouts are not known to, or able to be readily obtained by the psychiatrist or authorised medical practitioner
- > To a person if the psychiatrist or authorised medical practitioner has reason to believe doing so would be contrary to the best interests of the patient.

## Can A Patient On A Level 1 Community Treatment Order Be Treated Without Consent For A Mental Illness Or Any Other Illness?

No. A patient on a level 1 community treatment order may only be treated without consent for a mental illness. Further, the treatment of a patient's mental illness must be authorised by a psychiatrist or an authorised medical practitioner eg when a psychiatrist or authorised medical practitioner examines a patient to determine if a level 1 community treatment order (made by a medical practitioner or an authorised health professional) should be confirmed or revoked.

A patient on a level 1 community treatment order may not be treated for another illness without consent except in an emergency. In an emergency, authorisation to give treatment for a mental illness or any other illness is not required if:

- > Treatment is urgently needed for the well-being of the patient
- > Under the circumstances, it is not practicable to obtain authorisation.

Please note, this does not apply to prescribed psychiatric treatment such as Electroconvulsive Therapy (ECT) or neurosurgery.

It is not necessary to make a level 1 community treatment order in order to treat a person in an emergency situation. In an emergency situation, any medical practitioner can treat any person without consent for any illness including a mental illness.

## Who Can Authorise Treatment Of A Mental Illness For A Patient With A Level 1 Community Treatment Order?

Only a psychiatrist or an authorised medical practitioner who has examined the patient can authorise treatment of a mental illness for a patient on a level 1 community treatment order. Please note, this does not apply to prescribed psychiatric treatment such as Electroconvulsive Therapy (ECT) or neurosurgery.

A psychiatrist or an authorised medical practitioner cannot authorise treatment (without consent) for an illness that is not a mental illness for a patient on a level 1 community treatment order.

## Who Is Responsible For Monitoring Compliance With A Level 1 Community Treatment Order?

The Chief Psychiatrist must ensure that a mental health clinician has the ongoing responsibility for monitoring the patient and reporting to the Chief Psychiatrist on the patient's compliance with a level 1 community treatment order.

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## Level 2 Community Treatment Order

### Who Can Apply For A Level 2 Community Treatment Order?

An application for a level 2 community treatment order may be made to the Guardianship Board by:

- > The Public Advocate
- > A medical practitioner
- > A mental health clinician
- > A guardian, medical agent, relative, carer or friend of the person
- > Any other person who has a proper interest in the welfare of the person.

### How Is A Level 2 Community Treatment Order Made?

If the Guardianship Board is satisfied that:

- > The person has a mental illness; and
- > Because of the mental illness, the person requires treatment for the person's own protection from harm or for the protection of others from harm, including harm involved in the continuation or deterioration of the person's condition; and
- > There are facilities and services available for appropriate treatment; and
- > A community treatment order is deemed the most appropriate and least restrictive course of action in ensuring suitable treatment of the mental illness

then the Guardianship Board may make a level 2 community treatment order.

Consideration must be given to the prospects of the person receiving all treatment necessary for the protection of the person and others on a voluntary basis.

The Guardianship Board must notify the Chief Psychiatrist when a level 2 community treatment order is made, varied or revoked within 1 business day.

### Who Can Apply To Vary Or Revoke A Level 2 Community Treatment Order?

An application to vary or revoke a level 2 community treatment order may be made by:

- > The patient
- > The Public Advocate
- > A medical practitioner
- > A mental health clinician
- > A guardian, medical agent, relative, carer or friend of the patient
- > Any other person who has a proper interest in the welfare of the patient.

The Guardianship Board may at any time on application, vary or revoke a level 2 community treatment order.

### How Long Is A Level 2 Community Treatment Order Valid?

A level 2 community treatment order is valid for a maximum of:

- > 6 months for a child, and expiring at a time fixed in the order not later than 2pm on a business day
- > 12 months for all other patients, and expiring at a time fixed in the order not later than 2pm on a business day.



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## Can A Patient On A Level 2 Community Treatment Order Be Treated Without Consent For A Mental Illness Or Any Other Illness?

No. A patient on a level 2 community treatment order may only be treated without consent for a mental illness. Further, the treatment of a patient's mental illness must be authorised by a psychiatrist or an authorised medical practitioner who has examined the patient.

A patient on a level 2 community treatment order may not be treated for another illness without consent except in an emergency. In an emergency, authorisation to give treatment for a mental illness or any other illness is not required if:

- > Treatment is urgently needed for the well-being of the patient
- > Under the circumstances, it is not practicable to obtain authorisation.

Please note, this does not apply to prescribed psychiatric treatment such as Electroconvulsive Therapy (ECT) or neurosurgery.

In an emergency situation, any medical practitioner can treat any person without consent for any illness including a mental illness.

## Who Can Authorise Treatment Of A Mental Illness For A Patient With A Level 2 Community Treatment Order?

Only a psychiatrist or an authorised medical practitioner who has examined the patient can authorise treatment of a mental illness for a patient on a level 2 community treatment order. Please note this does not apply to prescribed psychiatric treatment such as Electroconvulsive Therapy (ECT) or neurosurgery.

A psychiatrist or an authorised medical practitioner cannot authorise treatment (without consent) for an illness that is not a mental illness for a patient on a level 2 community treatment order.

## Who Is Responsible For Monitoring Compliance With A Level 2 Community Treatment Order?

The Chief Psychiatrist must ensure that a mental health clinician has the ongoing responsibility for monitoring the patient and reporting to the Chief Psychiatrist on the patient's compliance with a level 2 community treatment order.

## How Is The Treatment And Care Of A Patient With A Level 2 Community Treatment Order Governed?

The treatment and care of a patient with a level 2 community treatment order must be governed by a treatment and care plan.

## Order For Detention And Treatment

### What Is A Detention And Treatment Order?

A detention and treatment order enables a person with a mental illness to be detained and to receive treatment for a mental illness or another illness in a treatment centre.

### Level 1 Detention And Treatment Order

A psychiatrist, an authorised medical practitioner\*, a medical practitioner or an authorised health professional may examine a person and make a level 1 detention and treatment order, calling for a person to be detained and to receive treatment if it appears that:

- > The person has a mental illness; and
- > Because of the mental illness, the person requires treatment for their own protection from harm, or for the protection of others from harm, including harm involved in the continuation or deterioration of the person's condition; and
- > A detention and treatment order is deemed the most appropriate and least restrictive course of action in ensuring suitable treatment of the mental illness.

Consideration must be given to the prospects of the person receiving all treatment necessary for the protection of the person and others on a community treatment order or on a voluntary basis.

\* A psychiatrist or an authorised medical practitioner who examines a person must be satisfied the criteria are met before making or confirming a level 1 community treatment order.

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### **How Is A Level 1 Detention And Treatment Order Made?**

A level 1 detention and treatment order must be made in writing by a psychiatrist, an authorised medical practitioner, a medical practitioner or an authorised health professional, by completing the appropriate form.

### **What Happens After A Level 1 Detention And Treatment Order Is Made?**

After a level 1 detention and treatment order is made, the patient must be examined by a psychiatrist or an authorised medical practitioner within 24 hours of the order being made, or as soon as practicable. If the level 1 detention and treatment order was made by a psychiatrist or an authorised medical practitioner, the subsequent examination must be by a different psychiatrist or authorised medical practitioner.

Following this examination, the psychiatrist or authorised medical practitioner may confirm the level 1 detention and treatment order if grounds exist for the making of the order.

If grounds do not exist for a level 1 detention and treatment order, the order must be revoked. A psychiatrist or authorised medical practitioner who has examined a patient to whom a level 1 detention and treatment order applies, may revoke the order at any time.

Notice to confirm or revoke a level 1 detention and treatment order must be issued in writing by a psychiatrist or authorised medical practitioner, by completing the appropriate form and forwarding to the Chief Psychiatrist and the Guardianship Board within 1 business day of confirming or revoking the order.

### **How Long Is A Level 1 Detention And Treatment Order Valid?**

A level 1 detention and treatment order is valid for a maximum of 7 days, expiring at a time fixed in the order not later than 2pm on a business day and not later than 7 days after the making of the order.

### **Will The Patient Receive A Copy Of A Level 1 Detention And Treatment Order?**

Yes. The psychiatrist, authorised medical practitioner, medical practitioner or authorised health professional making a level 1 detention and treatment order must ensure that the patient is given a copy of the order as soon as possible.

Additionally, the psychiatrist, authorised medical practitioner, medical practitioner or authorised health professional must ensure that the patient is given a statement of rights, informing the patient of their legal rights and any other information required to be provided to the patient.

### **What Happens If The Patient Is Unable To Read?**

If a patient is unable to read or understand the statement of rights, the psychiatrist, authorised medical practitioner, medical practitioner or authorised health professional must ensure that alternative ways to convey the information are investigated and taken.

### **Will The Guardian, Medical Agent, Relative, Carer Or Friend Receive A Copy Of A Level 1 Detention And Treatment Order?**

Yes. The director of the treatment centre in which the patient is first detained is required to arrange for a copy of the order and statement of rights to be given to the guardian, medical agent, relative, carer or friend of the patient as soon as practicable.

The director of the treatment centre is not required to send or give a copy of the order and statement of rights:

- > To a person whose whereabouts are not known to, or able to be readily obtained by the director of the treatment centre
- > To a person if the director of the treatment centre has reason to believe doing so would be contrary to the best interests of the patient.

### **Is A Psychiatrist, An Authorised Medical Practitioner Or A Medical Practitioner Required To Seek Consent From A Patient With A Level 1 Detention And Treatment Order Prior To Giving Treatment?**

No. Treatment for a mental illness or another illness may be given to a patient with a level 1 detention and treatment order, without the patient's consent, if authorised by a psychiatrist, an authorised medical practitioner or a medical practitioner who has examined the patient and can be carried out before confirmation of the order.

Please note, this does not apply to prescribed psychiatric treatment such as Electroconvulsive Therapy (ECT) or neurosurgery.

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## Level 2 Detention And Treatment Order

If a level 1 detention and treatment order has been made or confirmed by a psychiatrist or authorised medical practitioner, a level 2 detention and treatment order may be made after further examination of the patient. A psychiatrist or authorised medical practitioner may make a level 2 detention and treatment order if satisfied that:

- > The person has a mental illness; and
- > Because of the mental illness, the person requires treatment for their own protection from harm, or for the protection of others from harm, including harm involved in the continuation or deterioration of the person's condition; and
- > A detention and treatment order is deemed the most appropriate and least restrictive course of action in ensuring suitable treatment of the mental illness.

Consideration must be given to the prospects of the person receiving all treatment necessary for the protection of the person and others on a community treatment order or on a voluntary basis.

### Where Can A Level 2 Detention And Treatment Order Be Carried Out?

Detention under a level 2 detention and treatment order can only be carried out in an approved treatment centre and not a limited treatment centre.

### What Is An Approved Treatment Centre?

An approved treatment centre is a place approved by the Minister to be an approved treatment centre for the purposes of the Mental Health Act.

### What Is A Limited Treatment Centre?

A limited treatment centre may be a place approved by the Minister to be a limited treatment centre eg a country general hospital with the capacity to provide mental health care services for a limited period of time.

### How Is A Level 2 Detention And Treatment Order Made?

A level 2 detention and treatment order must be made in writing by a psychiatrist or an authorised medical practitioner, by completing the appropriate form and forwarding to the Chief Psychiatrist and the Guardianship Board within 1 business day of making the order.

A psychiatrist or authorised medical practitioner making a level 2 detention and treatment order must provide a written report to the director of the approved treatment centre where the patient is, or is to be detained. This report must contain the results of the examination of the patient and the reasons for making the order. Upon receipt of the report, the director of the treatment centre must forward a copy of the report to the Guardianship Board.

### How Can A Level 2 Detention And Treatment Order Be Revoked?

A psychiatrist or an authorised medical practitioner who has examined a patient to whom a level 2 detention order applies may revoke the order at any time.

Notice to confirm or revoke a level 2 detention and treatment order must be made in writing by a psychiatrist or an authorised medical practitioner by completing the appropriate form and forwarding to the Chief Psychiatrist and the Guardianship Board within 1 business day of confirming or revoking the order.

### How Long Is A Level 2 Detention And Treatment Order Valid?

A level 2 detention and treatment order is valid for a maximum of 42 days, expiring at a time fixed in the order not later than 2pm on a business day and not later than 42 days after the making of the order.

### Will The Patient Receive A Copy Of A Level 2 Detention And Treatment Order?

Yes. The psychiatrist or authorised medical practitioner making, confirming, varying or revoking a level 2 detention and treatment order must ensure that the patient is given a copy of the order as soon as possible.

Additionally, the psychiatrist or authorised medical practitioner must ensure that the patient is given a statement of rights, informing the patient of their legal rights and any other information required to be provided to the patient.

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### **What Happens If The Patient Is Unable To Read?**

If a patient is unable to read or understand the statement of rights, the psychiatrist or medical practitioner must ensure that alternative ways to convey the information are investigated and taken.

### **Will The Guardian, Medical Agent, Relative, Carer Or Friend Receive A Copy Of A Level 2 Detention And Treatment Order?**

Yes. The director of the treatment centre in which the patient is first detained is required to arrange for a copy of the order and statement of rights to be given to the guardian, medical agent, relative, carer or friend of the patient as soon as possible.

The director of the treatment centre is not required to send or give a copy of the order and statement of rights:

- > To a person whose whereabouts are not known to, or able to be readily obtained by the director of the treatment centre
- > To a person if the director of the treatment centre has reason to believe doing so would be contrary to the best interests of the patient

### **Is A Psychiatrist, An Authorised Medical Practitioner or A Medical Practitioner Required To Seek Consent From A Patient With A Level 2 Detention And Treatment Order Prior To Giving Treatment?**

No. Treatment for a mental illness or another illness may be given to a patient with a level 2 detention and treatment order as authorised by a psychiatrist, an authorised medical practitioner or a medical practitioner who has examined the patient without the patient's consent.

Please note, this does not apply to prescribed psychiatric treatment such as Electroconvulsive Therapy (ECT) or neurosurgery.

### **How Is The Treatment And Care Of A Patient With A Level 2 Detention And Treatment Order Governed?**

The treatment and care of a patient with a level 2 detention and treatment order must be governed by a treatment and care plan.

## **Level 3 Detention And Treatment Orders**

### **Who Can Apply For A Level 3 Detention And Treatment Order?**

An application for a level 3 detention and treatment order may be made to the Guardianship Board by:

- > The Public Advocate
- > The director of an approved treatment centre
- > An employee of an approved treatment centre who has been authorised to do so by the director of the treatment centre.

### **How Is A Level 3 Detention And Treatment Order Made?**

If the Guardianship Board is satisfied that:

- > The patient has a mental illness; and
- > Because of the mental illness, the patient requires treatment for the patient's own protection from harm or for the protection of others from harm, including harm involved in the continuation or deterioration of the person's condition; and
- > A detention and treatment order is deemed the most appropriate and least restrictive course of action in ensuring suitable treatment of the mental illness

then the Guardianship Board may make a level 3 detention and treatment order.

Consideration must be given to the prospects of the person receiving all treatment necessary for the protection of the person and others on a community treatment order or on a voluntary basis.

The Guardianship Board must notify the Chief Psychiatrist when a level 3 detention and treatment order is made, varied or revoked within 1 business day.

### **Where Can A Level 3 Detention And Treatment Order Be Carried Out?**

Detention under a level 3 detention and treatment order can only be carried out in an approved treatment centre and not a limited treatment centre.

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### **Who Can Apply To Vary Or Revoke A Level 3 Detention And Treatment Order?**

An application to vary or revoke a level 3 detention and treatment order may be made by:

- > The patient
- > The Public Advocate
- > A medical practitioner
- > A mental health clinician
- > A guardian, medical agent, relative, carer or friend of the patient
- > Any other person who has a proper interest in the welfare of the patient.

The Guardianship Board may at any time, on application, vary or revoke a level 3 detention and treatment order.

### **How Long Is A Level 3 Detention And Treatment Order Valid?**

A level 3 detention and treatment order is valid for a maximum of:

- > 6 months for a child, and expiring at a time fixed in the order not later than 2pm on a business day
- > 12 months for all other patients, and expiring at a time fixed in the order not later than 2pm on a business day

### **Is A Psychiatrist, An Authorised Medical Practitioner Or A Medical Practitioner Required To Seek Consent From A Patient With A Level 3 Detention And Treatment Order Prior To Giving Treatment?**

No. Treatment for a mental illness or another illness may be given to a patient with a level 3 detention and treatment order as authorised by a psychiatrist, an authorised medical practitioner or a medical practitioner who has examined the patient without the patient's consent.

Please note, this does not apply to prescribed psychiatric treatment such as Electroconvulsive Therapy (ECT) or neurosurgery.

### **How Is The Treatment And Care Of A Patient With A Level 3 Detention And Treatment Order Governed?**

The treatment and care of a patient with a level 3 detention and treatment order must be governed by a treatment and care plan.

### **Can A Patient Have Both A Community Treatment Order And A Detention And Treatment Order In Place At The Same Time?**

Yes. If a patient has both a community treatment order and a detention and treatment order, then the requirements of the community treatment order do not apply for the period in which a detention and treatment order operates.

If the community treatment order remains in force once a detention and treatment order no longer operates, then the requirements of the community treatment order will once again apply.

### **What Are The Responsibilities Of Treatment Centre Staff?**

When providing care for patients to whom a detention and treatment order applies, the director of the treatment centre must:

- > Admit the patient to the treatment centre if the patient is not already admitted
- > Comply with the detention and treatment order.

Subject to instruction by the director of the treatment centre, treatment centre staff may exercise any power that is reasonably required, including the power to use reasonable force to:

- > Carry out the detention and treatment order
- > Maintain order and security at the centre or prevent harm or nuisance to others.

### **Under What Circumstances Can A Patient Be Transferred From One Treatment Centre To Another?**

If the director of a treatment centre considers it necessary or appropriate for a patient with a detention and treatment order to be transferred to another treatment centre, the director may:

- > Firstly arrange with the director of the alternative treatment centre for the patient's admission to that centre, and if the patient is on a level 2 or a level 3 detention and treatment order, ensure that the alternative treatment centre is an approved treatment centre and not a limited treatment centre
- > Give direction for the patient to be transferred.

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### **Under What Circumstances Can A Patient Be Transferred To A Hospital?**

The director of a treatment centre may also give direction for a patient with a detention and treatment order:

- > To be transferred to a hospital, or between hospitals in circumstances where the patient has an illness other than a mental illness, after firstly arranging with the person in charge of the relevant hospital for the patient's admission
- > To be transferred back to the treatment centre after completion of the hospital treatment.

### **What Are The Responsibilities Of Hospital Staff?**

Hospital staff may exercise powers in relation to the patient as if they were treatment centre staff, including the power to use reasonable force to maintain order and security at the hospital or to prevent harm or nuisance to others.

### **Who Is Required To Be Notified If A Patient Is Transferred From A Treatment Centre To Another Treatment Centre Or To A Hospital?**

The director of the treatment centre is required to notify the guardian, medical agent, relative, carer or friend of the transfer of a patient as soon as possible.

Notice to transfer a patient from one treatment centre to another or to a hospital must be given to the guardian, medical agent, relative, carer or friend of the patient in writing by completing the appropriate form.

The director of the treatment centre is not required to give notice of transfer:

- > To a person whose whereabouts are not known to, or able to be readily obtained by the director of the treatment centre
- > To a person if the director of the treatment centre has reason to believe doing so would be contrary to the best interests of the patient.

### **Can A Patient With A Detention And Treatment Order Obtain Leave Of Absence?**

Yes. The director of a treatment centre may grant a patient leave of absence from a treatment centre for any purpose and period that the director considers appropriate.

The director must approve the leave of absence in writing by completing the appropriate form and the patient must be given a copy of the notice prior to commencement of the leave period.

The patient must also be given a written statement of rights prior to commencement of the leave period, informing the patient of their legal rights and any other information required under the regulations to be provided to the patient.

### **What If The Patient Is Unable To Read?**

If a patient is unable to read or understand the statement of rights, the director of the treatment centre must ensure that alternative ways to convey the information are investigated and taken.

### **Will The Guardian, Medical Agent, Relative, Carer Or Friend Receive A Copy Of The Statement Of Rights if The Patient is Being Granted A Leave Of Absence?**

Yes. The director of the treatment centre is required to arrange for a copy of the statement of rights to be given to the guardian, medical agent, relative, carer or friend of the patient as soon as possible.

The director of the treatment centre is not required to send or give a copy of the statement of rights:

- > To a person whose whereabouts are not known to, or able to be readily obtained by the director of the treatment centre
- > To a person if the director of the treatment centre has reason to believe doing so would be contrary to the best interests of the patient.

### **Can Leave Of Absence Be Cancelled?**

Yes. The director of a treatment centre may cancel any leave of absence that has been granted to a patient of the treatment centre.

The director must provide notification of cancellation of the leave of absence in writing by completing the appropriate form and take reasonable steps for the notice of cancellation to be given to the patient before, or as soon as practicable after the patient is taken back into the care of treatment centre staff.

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## Treatment And Care Plans

### What Is A Treatment And Care Plan?

A treatment and care plan governs the treatment and care of a patient with a mental illness.

### What Must Be Included In A Treatment And Care Plan For A Voluntary Patient In A Treatment Centre?

A treatment and care plan for a voluntary patient:

- > Must describe the treatment and care that will be provided to the patient at the treatment centre and should describe any rehabilitation services and other significant services that will be provided or available to the patient at the treatment centre or following discharge; and
- > Must, as far as practicable, be prepared and revised in consultation with the patient and any guardian, medical agent, relative, carer or friend of the patient; and
- > Must comply with the specific requirements of the regulations (if any).

### Treatment And Care Plans For Patients With A Community Treatment Order

The treatment and care of a patient with a level 2 community treatment order must, as far as practicable, be governed by a treatment and care plan directed towards the patient's recovery. The treatment and care plan:

- > Must describe the treatment and care that will be provided to the patient under the requirements of the order and should describe any rehabilitation services or other significant services that will be provided or available to the patient whether under the requirements of the order or through the patient's voluntary participation; and
- > Must, as far as practicable, be prepared and revised in consultation with the patient and any guardian, medical agent, relative, carer or friend of the patient; and
- > Must comply with the specific requirements of the regulations (if any).

### Treatment And Care Plans For Patients With A Detention And Treatment Order

The treatment and care of a patient with a level 2 or 3 detention and treatment order must, as far as practicable, be governed by a treatment and care plan directed towards the patient's recovery. The treatment and care plan:

- > Must describe the treatment and care that will be provided to the patient while in detention at an approved treatment centre, and should describe any rehabilitation services and other significant services that will be provided or available to the patient while in detention at the treatment centre and following discharge; and
- > Must, as far as practicable, be prepared and revised in consultation with the patient and any guardian, medical agent, relative, carer or friend of the patient; and
- > Must comply with the specific requirements of the regulations (if any).

### What Are Prescribed Psychiatric Treatments?

Prescribed psychiatric treatments include Electroconvulsive Therapy (ECT), neurosurgery for mental illness, and any other treatment declared by the regulations to be prescribed psychiatric treatment.

### What Is Electroconvulsive Therapy (ECT)?

Electroconvulsive Therapy (ECT) involves the application of an electrical stimulus as a treatment for mental illness. An episode of ECT is the period during which ECT stimuli are administered under a continuing general anaesthetic.

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## How Is ECT Required To Be Administered Under The Mental Health Act?

ECT must not be administered to a patient unless:

The patient has a mental illness; and

- > ECT or a course of ECT has been authorised for treatment of the illness by a psychiatrist who has examined the patient; and
- > Written consent to the treatment has been given by or on behalf of the patient.

If the patient is under the age of 16 and consent cannot be given by the patient or on behalf of the patient by a parent or a guardian, written consent must be given by the Guardianship Board.

Consent to a course of ECT must be limited to a maximum of 12 episodes of ECT and to a maximum period of 3 months.

A medical practitioner or a mental health clinician may make an application to the Guardianship Board for consent to administer ECT to a patient.

The application may be made after a psychiatrist who has examined the person has authorised the treatment and if effective consent cannot be given by or on behalf of the patient.

Any second or subsequent course of ECT for a patient must be separately consented to after the commencement or completion of the preceding course.

Administering ECT to a patient in order to determine the correct dosage for the future must be counted as a single episode of ECT in that course of treatment.

Consent to the administration of ECT extends to the administration of anaesthetics required for the purposes of the ECT treatment.

## Is A Psychiatrist Required To Seek Consent From A Patient Or The Guardianship Board Prior To Administering ECT To A Patient?

Yes. The only circumstances in which consent to an episode of ECT is not required are if a psychiatrist considers that:

- > The patient has a mental illness of such a nature that administration of the episode of ECT is urgently needed for the patient's well-being; and
- > In the circumstances it is not practicable to obtain consent.

A psychiatrist who administers or authorises the administration of an episode of ECT to a patient without consent, must ensure that notice of treatment is given in writing by completing the appropriate form and forwarding to the Chief Psychiatrist within 1 business day of administering treatment.

## What Is The Maximum Penalty For Failure To Comply With The Mental Health Act For Administering ECT?

Failure to comply with the requirements outlined in the Mental Health Act regarding the appropriate administration of ECT can result in a maximum penalty of \$50 000 or 4 years imprisonment.



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## Neurosurgery For Mental Illness

### What Is Neurosurgery For Mental Illness?

Neurosurgery is a surgical procedure which eliminates or stimulates apparently normal brain tissues as a treatment for severe mental illness, and can include leucotomy, amygdaloidotomy, hypothalamotomy, temporal lobectomy, cingulectomy, electrode implantation in the brain or any other brain surgery for the relief of mental illness.

### How Is Neurosurgery Required To Be Performed Under The Mental Health Act?

Neurosurgery must not be carried out on a patient as a treatment for mental illness unless:

- > The patient has a mental illness; and
- > The neurosurgery has been authorised for treatment of the illness by the person who is to carry it out, and by 2 psychiatrists, at least one of whom is a senior psychiatrist, and each of whom has separately examined the patient; and
- > The patient is over 16 years of age and written consent to the treatment has been given by the patient, or if consent cannot be given by the patient, then by the Guardianship Board.

A medical practitioner or a mental health clinician may make application to the Guardianship Board to seek consent to perform neurosurgery on a patient once the neurosurgery has been authorised and if effective consent cannot be given by or on behalf of the patient.

### What Is The Maximum Penalty For Failure To Comply With The Requirements For Performing Neurosurgery Under The Mental Health Act?

Failure to comply with the requirements outlined in the Mental Health Act regarding the appropriate performance of neurosurgery can result in a maximum penalty of \$50 000 or 4 years imprisonment.

### What Other Prescribed Psychiatric Treatments Does The Mental Health Act Govern?

The Mental Health Act may regulate the administration of any prescribed psychiatric treatment in addition to Electroconvulsive Therapy (ECT) and neurosurgery and impose additional requirements regarding prior authorisations and consents for other prescribed psychiatric treatments.

### What Is The Maximum Penalty For Administering Treatment Of A Mental Illness Without The Prior Authorisation Or Consent Required Under The Mental Health Act?

A maximum penalty of \$50 000 or 4 years imprisonment may be imposed for administering a treatment for mental illness without a prior authorisation or consent required under the Mental Health Act.

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## Further Protections For Persons With Mental Illness

### Can A Patient Be Assisted By An Interpreter If Required?

Yes. If a medical practitioner or an authorised health professional intends to examine a patient who is unable to communicate adequately in English but could communicate adequately with the assistance of an interpreter, the medical practitioner or authorised health professional must arrange for a competent interpreter to assist during the examination.

Arrangements for an interpreter are not required if the medical practitioner or authorised health professional and the patient are able to communicate adequately in a language other than English.

### What Information Is Required To Be Provided To The Patient By The Guardianship Board?

The Guardianship Board must ensure that the patient is given a copy of any order or decision made by the Guardianship Board as soon as possible after the order or decision is made.

Additionally, the Guardianship Board must provide the patient with a statement of rights informing the patient of their legal rights and any other information required to be provided to the patient.

### What Happens if The Patient Is Unable To Read?

If a patient is unable to read or understand the statement of rights, the Guardianship Board must ensure that alternative ways to convey the information are investigated and taken.

### What Information Is The Guardianship Board Required To Provide To The Guardian, Medical Agent, Relative, Carer Or Friend Of The Patient?

The Guardianship Board is required to arrange for a copy of the order or decision and statement of rights to be given to the guardian, medical agent, relative, carer or friend of the patient as soon as possible.

The Guardianship Board is not required to send or give a copy of the order or decision and statement of rights:

- > To a person whose whereabouts are not known to, or able to be readily obtained by the Guardianship Board
- > To a person if the Guardianship Board has reason to believe doing so would be contrary to the best interests of the patient.

### What Kind Of Support Can A Patient Receive From A Guardian, Medical Agent, Relative, Carer Or Friend?

A patient is entitled to have access to support from a guardian, medical agent, relative, carer or friend wherever practicable, in order to:

- > Exercise their rights under the Mental Health Act
- > Receive support during any communications between the patient and a medical practitioner, authorised health professional or treatment centre staff.

This support can also be provided by a community visitor, or a person who provides advocacy services on a professional or voluntary basis.

The person providing support to a patient must be allowed reasonable access to the patient as determined by the medical practitioner in charge of the patient's treatment, or treatment centre staff.

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## Can A Guardian, Medical Agent, Relative, Carer Or Friend Be Excluded From An Examination Or Treatment Of The Patient?

Yes. The person providing support to the patient may be excluded from an examination or treatment of the patient at the discretion of the medical practitioner in charge of the patient's treatment.

## Who Is A Patient Entitled To Communicate With Whilst Detained At A Treatment Centre?

A patient in a treatment centre is entitled to communicate with persons outside of the treatment centre, and to expect reasonable privacy in their communication with others.

This right is subject to restrictions and conditions at the discretion of the director of the treatment centre in:

- > Carrying out the detention and treatment order that applies to the patient; or
- > The maintenance of order and security at the centre and the prevention of harm or nuisance to others.

## Is A Patient Entitled to Receive Visitors Whilst Detained At A Treatment Centre?

Yes. A patient is entitled to receive visitors at the treatment centre and to expect reasonable privacy in their communication with visitors.

This right is subject to restrictions and conditions at the discretion of the director of the treatment centre in:

- > Carrying out the detention and treatment order that applies to the patient; or
- > The maintenance of order and security at the centre and the prevention of harm or nuisance to others.

## Can The Director Of A Treatment Centre Place Restrictions On Other Visitations With A Patient Or Communication By Post?

The director of a treatment centre is not able to place restrictions or conditions on visits or postal communications between the patient and:

- > The Minister
- > The Guardianship Board
- > The Public Advocate
- > The Chief Psychiatrist
- > The Health and Community Services Complaints Commissioner
- > A community visitor
- > A Member of Parliament
- > A legal practitioner.

## What Is The Maximum Penalty For Neglect Or Ill-Treatment Of A Patient By A Person Having The Over-Sight, Care Or Control Of The Patient?

The maximum penalty for a person having oversight, care or control over a patient who ill-treats or wilfully neglects the patient is \$25 000 or 2 years imprisonment.

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## Patient Transport Requests

### Under What Circumstances Can A Patient Be Transported?

A request to transport a patient may be issued under the following circumstances:

- > If a community treatment order applies to the patient and the patient has not complied with the requirements of the order, a medical practitioner or mental health clinician may request for the patient to be transported for treatment in accordance with the order
- > If a level 1 detention and treatment order applies to the patient and the patient is not at a treatment centre, the medical practitioner or authorised health professional may request for the patient to be transported to a treatment centre
- > If a detention and treatment order applies to the patient and the patient has left the treatment centre without authorisation, the director of the treatment centre, a medical practitioner or mental health clinician may request for the patient to be transported to the treatment centre
- > If a detention and treatment order applies to the patient, the director of a treatment centre may request for the patient to be transported to another treatment centre or to a hospital.

### Who Has The Responsibility For Transporting A Patient?

A patient to be transported can be placed into the care of a police officer or an authorised officer.

### Who Is Classified As An Authorised Officer?

An authorised officer can be:

- > A mental health clinician
- > An ambulance officer
- > A medical officer or a flight nurse for the Royal Flying Doctor's Service
- > Another person authorised under regulations to the Mental Health Act.

### How Is A Request To Transfer A Patient Issued?

A patient transport request must be issued in writing by completing the appropriate form and the request must be directed to authorised officers or police officers generally.

### Will The Patient Receive A Copy Of The Patient Transport Request?

Yes. A patient who is to be taken into the care and control of an authorised officer or a police officer must be given a copy of the patient transport request as soon as possible.

### What Are The Responsibilities Of Authorised Officers?

If an authorised officer believes that:

- > A patient has a patient transport request issued under their name; or
- > A patient has a detention and treatment order and has left the treatment centre without authorisation; or
- > A person has a mental illness and has caused, or there is significant risk of the person causing harm to themselves, others or to property; or
- > A person requires a medical examination

then the authorised officer may:

- > Take the person into their care and control
- > Transport the person from place to place
- > Restrain the person and use force as reasonably required under the circumstances
- > Restrain the person by administering a drug when reasonably required under the circumstances if authorised to do so under the Controlled Substances Act 1984
- > Enter and remain in a place where the authorised officer reasonably suspects the person may be found
- > Search the person's clothing or possessions and confiscate anything in the person's possession that may be used to cause harm to the person, to others or to property. A search of a person must be carried out efficiently, and in a manner that avoids causing the person any humiliation or offence where possible. Anything taken into the possession of an authorised officer may be held for as long as necessary for reasons of safety, but must be returned to the person from whom it was taken, or dealt with according to law.

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An authorised officer who takes the person into their care or control must as soon as possible:

- > Transport the person, or arrange for the person to be transported by another authorised officer or police officer in accordance with the patient transport request, to a treatment centre or appropriate place for a medical examination.

### What Are The Responsibilities Of Police Officers?

A police officer is not required to exercise any medical expertise in order to form an opinion about a person, and may form such an opinion based on the police officer's observations of the person's behaviour, appearance or reports about the person's behaviour, appearance or history.

If a police officer believes that:

- > A patient has a patient transport request issued under their name; or
- > A patient has a detention and treatment order and has left a treatment centre without authorisation; or
- > A person has a mental illness and has caused, or there is significant risk of the person causing harm to themselves, others or to property; **and**
- > A person requires a medical examination

then the police officer may:

- > Take the person into their care and control
- > Transport the person from place to place
- > Restrain the person and use reasonable force as required under the circumstances
- > Enter and remain in a place where the police officer reasonably suspects the person may be found
- > Use reasonable force to break into a place when reasonably required, in order to take the person into their care or control
- > Search the person's clothing or possessions and confiscate anything in the person's possession that may be used to cause harm to the person, to others or to property. A search of a person must be carried out efficiently, and in a manner that avoids causing the person any humiliation or offence where possible. Anything taken into the possession of a police officer may be held for as long as necessary for reasons of safety, but must be returned to the person from whom it was taken, or dealt with according to law.

A police officer who takes the person into their care or control must, as soon as possible:

- > Transport the person, or arrange for the person to be transported by another police officer or an authorised officer in accordance with the patient transport request, to a treatment centre or appropriate place for a medical examination.

### Can A Person Be Released From Police Custody If Requiring Medical Examination Or Treatment?

Yes. If a police officer has arrested a person for an offence, the person may be released from police custody for the purpose of medical examination or treatment.

If a person who has been arrested for an offence is released from police custody for the purpose of medical examination or treatment:

- > The Commissioner of Police must be notified and
- > The person must be held and returned to police custody if a detention and treatment order is not made, or ceases to apply.

### Are Authorised Officers And Police Officers Able To Assist Each Other In Taking A Person Into Their Care Or Control, Or Transporting A Person?

Yes. Authorised officers and police officers may assist each other in exercising their powers under the Mental Health Act.

### What Is The Maximum Penalty For A Person Who Hinders Or Obstructs An Authorised Officer Or A Police Officer?

The maximum penalty for a person who hinders or obstructs an authorised officer or a police officer from exercising their powers under the Mental Health Act is \$25 000.

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## Arrangements Between South Australia And Other Jurisdictions

### Can Interstate Authorised Officers Or Police Officers Carry Out Requests Or Actions Involving Patients With A South Australian Community Treatment Order Or A Detention And Treatment Order?

Yes. The Chief Psychiatrist in South Australia may request or approve an action by an interstate authorised officer or a police officer under the corresponding mental health law of the State or Territory if:

- > There is a ministerial agreement with a Minister of the State or Territory that provides for such action; and
- > The action may legally be taken under the corresponding law or ministerial agreement at the request of or with the approval of an interstate officer; and
- > The action is in the best interests of the patient or person.

### Can South Australian Authorised Officers And Police Officers Exercise Powers Under Corresponding Interstate Laws Or Ministerial Agreements?

Yes. South Australian authorised officers and police officers may exercise powers under corresponding interstate laws or under ministerial agreements.

### Can Interstate Authorised Officers And Police Officers Exercise Powers Under Corresponding Interstate Laws When They Are In South Australia?

Yes. An interstate authorised officer or police officer who is authorised to exercise powers under a corresponding interstate law in connection with an interstate community treatment order may exercise those powers in South Australia, however powers do not extend to forcible entry.

## Treatment In Other Jurisdictions

### Can A Patient Receive Treatment At An Interstate Treatment Centre?

A South Australian community treatment order may be made or varied so that a person is required to receive treatment of a mental illness at an interstate treatment centre.

### What If The Patient Refuses To Attend An Interstate Treatment Centre?

If a South Australian community treatment order requires the patient to be treated at an interstate treatment centre, and the patient does not comply with the requirements of the order, then the Chief Psychiatrist may issue a patient transport request to transport the patient to the interstate treatment centre.

### Can An Interstate Patient Receive Treatment At A South Australian Treatment Centre?

Yes. An interstate community treatment order can be made or varied so that the order requires the patient to receive treatment for a mental illness in South Australia.

If an interstate community treatment order applies to a person who is now in South Australia, the Chief Psychiatrist may, without medical examination of the person, make a level 1 community treatment order for the treatment of the person's mental illness in South Australia based on the requirements of the interstate community treatment order. The Chief Psychiatrist may make the level 1 community treatment order regardless of whether the person resides in South Australia.

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## Transfer To Or From South Australian Treatment Centres

The director of a South Australian treatment centre may, with the approval of the Chief Psychiatrist, give direction for the transfer of a patient to an interstate treatment centre. This may apply to a patient who is detained in a South Australian treatment centre or who has left a South Australian treatment centre without authorisation.

### How Is A Request To Transfer A Patient To An Interstate Treatment Centre Issued?

The director of a treatment centre must issue a request to transfer a patient to an interstate treatment centre in writing by completing the appropriate form and forwarding to the Chief Psychiatrist for approval.

### Is The Guardian, Medical Agent, Relative, Carer Or Friend Of The Patient To Be Notified If A Patient Is To Be Transferred To An interstate Treatment Centre?

Yes. The director of the treatment centre is required to notify the guardian, carer, relative, friend or medical agent of the patient of the transfer of the patient to an interstate treatment centre.

The director of the treatment centre is not required to notify:

- > A person whose whereabouts are not known to, or able to be readily obtained by the director of the treatment centre
- > A person if the director of the treatment centre has reason to believe doing so would be contrary to the best interests of the patient.

### Is The Guardianship Board Required To Be Notified If A Patient Is To Be Transferred To An Interstate Treatment Centre?

If the patient is detained in a South Australian treatment centre under a level 3 detention and treatment order, the director of the treatment centre must notify the Guardianship Board of the patient's transfer to an interstate treatment centre.

### Can An Appeal Be Made Against Transferring A Patient To An Interstate Treatment Centre?

Yes. An appeal can be made against a direction transferring a patient to an interstate treatment centre up to 14 days after a request to transfer a patient has been made. For this reason, a patient must not be transferred to an interstate treatment centre until the period allowed for appeal has lapsed, or in the case of an appeal being made, until the appeal has been determined.

### Transfer From An Interstate Treatment Centre To A South Australian Treatment Centre

The director of a South Australian treatment centre may, with the approval of the Chief Psychiatrist, give direction for the transfer of a patient with an interstate detention and treatment order to a South Australian treatment centre. If approval is given, the patient may be admitted to a South Australian treatment centre as if a level 1 detention and treatment order has been made under the Mental Health Act.

### How Is A Request To Transfer A Patient To A South Australian Treatment Centre Approved?

The director of a treatment centre may approve a request to transfer an interstate patient to a South Australian treatment centre in writing by completing the appropriate form and forwarding a copy to the Chief Psychiatrist for information.

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## Transport To Other Jurisdictions

A patient with a South Australian detention and treatment order may be:

- > Transported to an interstate treatment centre
- > Delivered into the care and control of an interstate authorised officer/police officer for the purpose of being transported to an interstate treatment centre.

## Transport To Other Jurisdictions Of A Person With Apparent Mental Illness

If a South Australian authorised officer or a police officer has taken into their care and control, a person who appears to have a mental illness, the authorised officer or police officer may:

- > Transport the person to an interstate treatment centre, an interstate medical practitioner or an interstate authorised health professional (or equivalent) for medical examination
- > Deliver the person into the care or control of an interstate authorised officer or a police officer for the purpose of being transported to an interstate treatment centre, an interstate medical practitioner or an interstate authorised health professional (or equivalent) for medical examination.

## Transport To Other Jurisdictions When Interstate Detention And Treatment Orders Apply

If a South Australian authorised officer believes on reasonable grounds that a person in South Australia is an interstate patient who has left a treatment centre without authorisation, 1 or more of the following powers may be exercised:

- > The person may be taken into the care and control of a South Australian authorised officer/police officer
- > The person may be transported to an interstate treatment centre by a South Australian authorised officer/police officer
- > The person may be delivered by a South Australian authorised officer into the care or control of an interstate authorised officer/police officer for the purpose of transporting the person to an interstate treatment centre
- > The person may be taken to a South Australian treatment centre by a South Australian authorised officer/police officer and detained there awaiting the person's transport to an interstate treatment centre
- > The person may be given treatment in South Australia for their mental illness or any other illness without any requirement for the person's consent, as authorised by a medical practitioner who has examined the patient. This does not apply to prescribed psychiatric treatment such as Electroconvulsive Therapy (ECT) or neurosurgery.

If an interstate authorised officer/police officer believes on reasonable grounds that a person in South Australia is an interstate patient who has left a treatment centre without authorisation, the officer may transport the person to an interstate treatment centre.

## Transport To South Australia When South Australian Detention And Treatment Orders Apply

If a South Australian authorised officer/police officer believes on reasonable grounds that a person in the care or control of an interstate officer outside of South Australia is a South Australian patient who has left a treatment centre without authorisation, the officer may transport the person to a South Australian treatment centre.

If an interstate authorised officer/police officer believes on reasonable grounds that a person in the care or control of an interstate officer outside of South Australia is a South Australian patient who has left a treatment centre without authorisation, the officer may:

- > Transport the person to a South Australian treatment centre
- > Deliver the person into the care or control of a South Australian authorised officer/police officer for the purpose of the person's transport to a South Australian treatment centre.



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## Reviews And Appeals

### What Reviews Must The Guardianship Board Conduct?

The Guardianship Board must conduct the following reviews:

- > A review of the circumstances involved in the making of a level 1 community treatment order
- > A review of the circumstances involved in the revoking of a level 1 community treatment order, if the order was not reviewed by the Guardianship Board prior to being revoked
- > A review of a level 2 community treatment order that applies to a child, and continues to apply to the child 3 months after the making of the order
- > A review of the circumstances involved in the making of a level 1 detention and treatment order, if the order has been made within 7 days of the expiry or revoking of a previous detention and treatment order applying to the same person
- > A review of a level 3 detention and treatment order that applies to a child, and continues to apply to the child 3 months after making the order
- > Any other review that the Guardianship Board considers appropriate with regard to a community treatment order, a detention and treatment order or treatment administered to a person.

If a review applies to a patient whose care is being governed by a treatment and care plan, the Chief Psychiatrist must provide a copy of the treatment and care plan to the Guardianship Board at or before commencement of the review.

### Decisions And Reports Of Reviews

On completion of a review of a community treatment order or a detention and treatment order, the Guardianship Board may do 1 or more of the following:

- > Affirm the order
- > Vary the order
- > Revoke the order
- > Make an alternative order (including an order that the person's treatment and care plan be reviewed).

The Guardianship Board may provide a written report to the Minister on any matter that the Guardianship Board considers should be drawn to the Minister's attention.

### Under What Circumstances Can The Guardianship Board Revoke An Order Following A Review?

If the Guardianship Board is not satisfied that proper grounds exist for a community treatment order or detention and treatment order to remain in place, the Guardianship Board must revoke the order.

### Appeals To The Guardianship Board Against Orders

An appeal can be made to the Guardianship Board against a community treatment order or a detention and treatment order, if the order has not been made by the Guardianship Board.

If an appeal applies to a patient whose care is being governed by a treatment and care plan, the Chief Psychiatrist must provide a copy of the treatment and care plan to the Guardianship Board at or before commencement of appeal proceedings.

### Who Can Make An Appeal To The Guardianship Board Against An Order?

The following persons who are dissatisfied with a community treatment order or a detention and treatment order may appeal to the Guardianship Board against the order:

- > The person to whom the order applies
- > The Public Advocate
- > A guardian, medical agent, relative, carer or friend of the person to whom the order applies
- > Any other person who satisfies the Guardianship Board that he/she has a proper interest in the matter.

### When Can An Appeal Be Made To The Guardianship Board Against An Order?

An appeal to the Guardianship Board against an order may be made at any time that the order is current.

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### **Is An Order Considered To Be In Operation During The Appeal Process?**

Yes. A community treatment order or a detention and treatment order continues to operate during the appeal process, however the Guardianship Board may vary or suspend an order until the outcome of the appeal is determined if special reasons exist for doing so.

### **Decisions On Appeals**

On hearing an appeal against a community treatment order or a detention and treatment order, the Guardianship Board may do 1 or more of the following:

- > Dismiss the appeal
- > Affirm the order
- > Vary the order
- > Revoke the order
- > Make an alternative order (including an order that the person's treatment and care plan be reviewed).

### **Under What Circumstances Can The Guardianship Board Revoke An Order Following The Hearing Of An Appeal?**

If the Guardianship Board is not satisfied that proper grounds exist for a community treatment order or detention and treatment order to remain in place, the Guardianship Board must revoke the order.

### **Appeals To The Guardianship Board Against A Transfer To An Interstate Treatment Centre**

The Guardianship Board may hear an appeal against the proposed transfer of a patient to an interstate treatment centre, and on completion of the appeal process either:

- > Affirm the decision to transfer a patient to an interstate treatment centre
- > Revoke the decision to transfer a patient to an interstate treatment centre

### **Who Can Make An Appeal To The Guardianship Board Against The Transfer Of A Patient To An Interstate Treatment Centre?**

The following persons who are dissatisfied with a decision to transfer a patient to an interstate treatment centre may appeal to the Guardianship Board against the decision:

- > The patient
- > The Public Advocate
- > A guardian, medical agent, relative, carer or friend of the patient
- > Any other person who has a proper interest in the matter.

### **When Can An Appeal To The Guardianship Board Against The Transfer Of A Patient To An Interstate Treatment Centre Be Made?**

An appeal to the Guardianship Board against the transfer of a patient to an interstate treatment centre may be made up to 14 days after a request to transfer a patient has been made.

### **Legal Representation On Appeals To The Guardianship Board**

#### **Is The Patient Entitled To Legal Representation During The Appeal Process?**

Yes. During the appeal process, a patient is entitled to be represented by a legal practitioner either chosen by the patient or, if not, by another person or authority on behalf of the patient.

#### **Is The Patient Required To Pay For Legal Representation During The Appeal Process?**

No. A legal practitioner who is not an employee of the Crown or a statutory authority will receive payment for their services in accordance with a scheme established by the Minister, and cannot receive further payment for their services from any other person.

The patient does however have the right to engage the services of a legal practitioner at the patient's own expense, or to appear personally, or by the Public Advocate or other person.

### **Appeals To The District Court And The Supreme Court**

There are provisions for appeals to be made to the District Court and Supreme Court in relation to orders and decisions of the Guardianship Board. The Guardianship and Administration Act 1993 governs the rights of this appeal.

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## What Are The Responsibilities Of The Minister?

The Minister has the following responsibilities under the Mental Health Act:

- > To encourage and facilitate the involvement of persons who currently have, or have previously had a mental illness, their carers and the community in the development of mental health policies and services
- > To develop or promote a strong and viable system of treatment and care, and a full range of services and facilities for persons with mental illness
- > To develop or promote ongoing programs for optimising the mental health of children and young persons who have been under the guardianship or in the custody of the Minister in accordance with the Children's Protection Act 1993
- > To develop or promote services that aim to prevent mental illness, and intervene early when mental illness is evident
- > To ensure that information about mental health and mental illness is made available to the community and to promote public awareness about mental health and mental illness
- > To develop or promote appropriate education and training programs, and effective systems of accountability for persons delivering mental health services
- > To promote services in the non-government sector that are designed to assist persons with mental illness
- > To develop or promote programs to reduce the adverse impact of mental illness on family and community life
- > Any other functions assigned to the Minister by the Mental Health Act.

### Delegation By The Minister

The Minister may delegate power or authority to another person or body, in order to perform particular duties, to hold a position or to act in a position.

### Delegation By The Chief Executive

The Chief Executive may delegate power or authority to another person or body, in order to perform particular duties, to hold a position or to act in a position.

### Authorised Medical Practitioners

The Minister may determine in writing that a specific medical practitioner be an authorised medical practitioner for the purposes of the Mental Health Act. The Minister may:

- > Attach conditions or limitations to the determination
- > Vary or revoke the conditions or limitations.

### Authorised Health Professionals

The Minister may determine in writing that a specific person be an authorised health professional for the purposes of the Mental Health Act. The Minister may:

- > Attach conditions or limitations to the determination
- > Vary or revoke the conditions or limitations.

### Code Of Practice For Authorised Health Professionals

The Minister may place a notice in the Gazette, approving or endorsing a code of practice governing the exercising of powers by authorised health professionals under the Mental Health Act, and the Minister may place a notice in the Gazette, varying or revoking a notice.

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## Treatment Centres

### Approved Treatment Centres

The Minister may determine in writing that a specified place will be an approved treatment centre for the purposes of the Mental Health Act. The Minister may:

- > Attach conditions or limitations to the determination
- > Vary or revoke the conditions or limitations.

### Limited Treatment Centres

The Minister may determine in writing that a specified place will be a limited treatment centre for the purposes of the Mental Health Act. The Minister may:

- > Attach conditions or limitations to the determination
- > Vary or revoke the conditions or limitations of the determination.

### Register Of Patients

The director of a treatment centre must ensure records are kept relating to every patient admitted to the treatment centre under a detention and treatment order or as a voluntary patient.

The records must be kept in accordance with recording requirements approved by the Minister and set out:

- > The name and address of each patient
- > The nature of any mental or other illness or incapacity of the patient
- > Full details of the treatment of the patient and of the authorisation of that treatment including the use of medication, mechanical body restraint or seclusion
- > If the person dies, the time, date and cause of death
- > Any other information required under the regulations to the Mental Health Act.

### Particulars Relating To The Admission Of Patients To Treatment Centres

The Minister must ensure that the following information is provided free of charge to any person who requests the information and who has a proper interest in the matter:

- > Information regarding the status of a patient's admission to or detention in a treatment centre under the Mental Health Act
- > If admitted to a treatment centre, the date of the person's admission and where applicable, the date of the person's discharge or death.

### What Information Must A Person Be Given Upon Discharge From A Treatment Centre?

When a person is discharged from a treatment centre, the director of a treatment centre must provide the person with copies of any orders, certificates or authorisations on which the person was admitted, detained or treated. These documents must be provided free of charge.

### Delegation By Directors Of Treatment Centres

The director of a treatment centre may delegate power or authority to another person in order to perform particular duties, to hold a position or to act in a position.

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## Errors In Orders

### What Happens If There Is An Error In An Order?

As long as the intended meaning and effect of the document is reasonably apparent, the document will be valid and effective, despite not complying with the requirements of the Mental Health Act.

If there is a clerical error, omission or a mistake regarding the description of a person in an order, notice or other document, the author of the document or the Guardianship Board may make any necessary correction of the document. Such correction will be taken to have effect from the date of the making of the original document.

## Offences Relating To Authorisations And Orders

### What If A Medical Practitioner Or An Authorised Health Professional Fails To Examine A Patient Prior To Making An Order Or Prior To Signing Any Authorisation?

A medical practitioner or an authorised health professional who signs any authorisation or order for the purposes of the Mental Health Act without having examined a person is guilty of an offence and faces a maximum penalty of \$25 000 or 2 years imprisonment.

### What If A Medical Practitioner Or An Authorised Health Professional Provides False Or Misleading Information Regarding The Mental Health Status Of A Patient?

A medical practitioner or an authorised health professional who:

- > Certifies that a person has a mental illness, but does not believe that the person has a mental illness; or
- > Makes any false or misleading statement or knowingly provides false or misleading information in an authorisation or order for the purposes of the Mental Health Act

is guilty of an offence and faces a maximum penalty of \$25 000 or 2 years imprisonment.

### What If An Unauthorised Person Pretends To Be A Medical Practitioner Or An Authorised Health Professional?

A person who is not a medical practitioner or an authorised health professional who signs a certificate or order for the purposes of the Mental Health Act, pretending to be a medical practitioner or an authorised health professional, or in any way pretends to be a medical practitioner or an authorised health professional for the purposes of the Mental Health Act is guilty of an offence and faces a maximum penalty of \$25 000 or 2 years imprisonment.

### What If A Person Fraudulently Attempts To Admit And Have Detained A Person Who Does Not Have A Mental Illness In A Treatment Centre?

A person who fraudulently attempts to admit and detain a person who does not have a mental illness in a treatment centre is guilty of an offence and faces a maximum penalty of \$25 000 or 2 years imprisonment.

## Relatives Of Medical Practitioners Or Authorised Health Professionals

### Can A Medical Practitioner Or Authorised Health Professional Sign Any Order Or Authorisation Relating To The Treatment And Detention Of Relatives?

No. A medical practitioner or an authorised health professional cannot sign any order or authorisation relating to the detention or treatment of a person who is related to the medical practitioner or authorised health professional as a blood relative, through marriage or a domestic partner of the medical practitioner or authorised health professional.

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## Removing Patients From Treatment Centres

### What If A Person Removes A Patient From A Treatment Centre Or Aids A Patient To Leave A Treatment Centre Without Authorisation?

A person who, without a lawful excuse, removes a patient who is being detained in a treatment centre from the centre, or aid the patient to leave the centre, faces a maximum penalty of \$25 000 or 2 years imprisonment.

### What If A Person Harbours Or Assists A Patient Who Has Left A Treatment Centre Without Authorisation?

A person who knowingly harbours or assists a patient who has left a treatment centre without authorisation, or is recklessly indifferent to the fact that a patient has left a treatment centre without authorisation is guilty of an offence and faces a maximum penalty of \$25 000 or 2 years imprisonment.

## Confidentiality And Disclosure Of Information

### Under What Circumstances Can Current Or Former Employees Engaged In The Administration Of The Mental Health Act Disclose Personal Information Relating To A Patient?

A person engaged or formerly engaged in the administration of the Mental Health Act must not disclose personal information relating to a patient unless authorised or required to disclose information by the Chief Executive.

Circumstances under which information may be disclosed include:

- > Disclosing information as required by law, or as required for the administration of the Mental Health Act, or a law of another State or Territory of the Commonwealth
- > Disclosing information to a guardian, medical agent, relative, carer or friend of the patient if the patient has requested this
- > Disclosing information to a guardian, medical agent, relative, carer or friend of the patient who is on an order if the disclosure is reasonably required for the treatment, care or rehabilitation of the patient, and is in the best interests of the patient. Under this circumstance, voluntary patients may still direct for this information to remain confidential.
- > Disclosing information to a health provider or other service provider if the disclosure is reasonably required for the treatment, care or rehabilitation of the patient
- > Disclosing information by entering the information into an electronic records system established for the purpose of enabling the recording or sharing of information between persons or bodies involved in the provision of health services
- > Disclosing information as reasonably required in connection with the management or administration of a hospital or SA Ambulance Service Inc. including for the purpose of charging for a service
- > Disclosing information if the disclosure is reasonably required to lessen or prevent a serious threat to the life, health or safety of a person, or a serious threat to public health or safety
- > Disclosing information for medical or social research purposes if the research methodology has been approved by an ethics committee and if the disclosure is not contrary to the best interests of the patient
- > Disclosing information in accordance with the regulations to the Mental Health Act.

### What If Current Or Former Employees Engaged In The Administration Of The Mental Health Act Disclose Personal Information Relating To A Patient?

The maximum penalty for the unauthorised disclosing of personal information relating to a patient is \$25 000.

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## Prohibition Of Publication Of Reports Of Proceedings

### What If A Person Publishes A Report Of Proceedings Under The Mental Health Act?

The maximum penalty for publishing a report of any proceedings under the Mental Health Act is \$25 000.

### Under What Circumstances Can A Report Of Proceedings Under The Mental Health Act Be Published?

The Guardianship Board may authorise the publication of a report of proceedings under the Mental Health Act, if satisfied that the person applying to do so has a proper interest in the matter.

A person who is authorised to publish a report must not, without authorisation from the Guardianship Board, disclose any information in the report that identifies or could identify the person to whom the proceedings relate. The maximum penalty for disclosing such information is \$25 000.

## Requirements For Written Notices To The Guardianship Board And Chief Psychiatrist

### What If A Medical Practitioner Or Authorised Health Professional Fails To Provide Required Written Notices To The Guardianship Board And Chief Psychiatrist?

A medical practitioner or authorised health professional must not fail, without reasonable excuse, to provide all required written notices to the Guardianship Board and Chief Psychiatrist, and faces a maximum penalty of \$1250.

## Evidentiary Provisions

Section 109 of the Mental Health Act sets out evidentiary provisions in legal proceedings, particularly in relation to the acceptance of documents made under the Mental Health Act as evidence.

## Regulations

There are provisions within the Mental Health Act that enable regulations to be made that are necessary or expedient for the purposes of the Act.

## When Must The Mental Health Act Be Reviewed?

Within 4 years after the commencement of the Mental Health Act, the Minister must:

- > Ensure that a report is prepared on the operation of the Mental Health Act
- > Ensure that a copy of the report is laid before each House of Parliament.

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## Certain Conduct May Not Indicate Mental Illness

A person does not have a mental illness merely because of 1 or more of the following:

- > The person has expressed, refused or failed to express a particular political opinion or belief or continues to do so
- > The person has expressed, refused or failed to express a particular religious opinion or belief or continues to do so
- > The person has expressed, refused or failed to express a particular philosophy or continues to do so
- > The person has expressed, refused or failed to express a particular sexual preference or sexual orientation or continues to do so
- > The person has engaged in, refuses to or fails to engage in a particular political activity or continues to do so
- > The person has engaged in, refuses to or fails to engage in a particular religious activity or continues to do so
- > The person has engaged in a particular sexual activity or sexual promiscuity or continues to do so
- > The person has engaged in immoral conduct
- > The person has engaged in illegal conduct
- > The person has developmental disability of the mind
- > The person has engaged in antisocial behaviour
- > The person has a particular economic or social status or is a member of a particular cultural or racial group
- > The person has taken alcohol or any other drug, however nothing prevents the serious or permanent physiological, biochemical or psychological effects of drug taking from being regarded as an indication of mental illness.

## Repeal And Transitional Provisions

The Mental Health Act 1993 is repealed and once the Mental Health Act 2009 comes into force transitional provisions will apply to:

- > Orders for admission and detention
- > Proceedings of the Guardianship Board
- > Appeal processes.

These provisions are set out in the Mental Health Act 2009.

## What Are The Responsibilities Of The Chief Psychiatrist?

The Governor may appoint a senior psychiatrist to the position of Chief Psychiatrist, and the terms and conditions of the appointment will be determined by the Governor.

The Chief Psychiatrist has the following functions:

- > To promote continuous improvement in the organisation and delivery of mental health services in South Australia
- > To monitor the treatment of voluntary patients
- > To monitor the treatment of patients with a detention and treatment order
- > To monitor the use of mechanical body restraints and seclusion of patients
- > To monitor the administration of the Mental Health Act and the standard of psychiatric care provided in South Australia
- > To advise the Minister on issues relating to psychiatry and report to the Minister any matters of concern relating to the care or treatment of patients
- > Any other functions assigned to the Chief Psychiatrist by the Mental Health Act or functions assigned to the Chief Psychiatrist by the Minister.



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The Chief Psychiatrist may, with the approval of the Minister, issue standards to be observed in the care or treatment of patients. Any standards issued by the Chief Psychiatrist under this section will be binding:

- > On any hospital that is an incorporated hospital under the Health Care Act 2008
- > As a condition of the license at any private hospital premises under the Health Care Act 2008.

The Chief Psychiatrist:

- > Will have the authority to conduct inspections of the premises and operations of any hospital that is an incorporated hospital under the Health Care Act 2008
- > Be taken to be an inspector under the Health Care Act 2008.

## Delegation By The Chief Psychiatrist

The Chief Psychiatrist may delegate power or authority to another person in order to perform particular duties, to hold a position or to act in a position.

### What Are The Responsibilities Of The Chief Psychiatrist Regarding Community Treatment Orders?

The Chief Psychiatrist must:

- > Acknowledge in writing, receipt of the notification from a psychiatrist or authorised medical practitioner of any community treatment order being made, confirmed or revoked within 1 business day
- > Ensure that a mental health clinician has the ongoing responsibility for monitoring the patient and reporting to the Chief Psychiatrist on the patient's compliance with a community treatment order.

### What Are The Responsibilities Of The Chief Psychiatrist Regarding Detention And Treatment Orders?

The Chief Psychiatrist must:

- > Acknowledge in writing, receipt of the notification from a psychiatrist or authorised medical practitioner of any detention and treatment order being made, confirmed or revoked within 1 business day.

## Annual Report By The Chief Psychiatrist

The Chief Psychiatrist must, before 30 September each year, present a report to the Minister containing specific information regarding each level of a community treatment order or a detention and treatment order including:

- > Information about the number and duration of the orders made or in force during the preceding financial year
- > Demographic information about the patients, including information about areas of residence, places of treatment, and in the case of detention and treatment orders, places of detention.

The Minister must, within 12 sitting days after receiving the report, arrange for copies of the report to be laid before each House of Parliament.

### What Are The Responsibilities Of The Guardianship Board Regarding Community Treatment Orders?

The Guardianship Board must:

- > Acknowledge in writing, receipt of the notification from a psychiatrist or authorised medical practitioner of a level 1 community treatment order within 1 business day
- > Review the order as soon as possible after receipt and before the order expires.

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If the Guardianship Board is satisfied that:

- > The patient has a mental illness; and
- > Because of the mental illness, the patient requires treatment for the patient's own protection from harm or for the protection of others from harm, including harm involved in the continuation or deterioration of the person's condition; and
- > There are facilities and services available for appropriate treatment; and
- > A community treatment order is deemed the most appropriate and least restrictive course of action in ensuring suitable treatment of the mental illness

then the Guardianship Board may make a level 2 community treatment order. If not, the Guardianship Board must revoke the level 1 community treatment order.

Consideration must be given to the prospects of the person receiving all treatment necessary for the protection of the person and others on a voluntary basis.

The Guardianship Board must notify the Chief Psychiatrist within 1 business day when a level 2 community treatment order is made, varied or revoked.

The Guardianship Board is also responsible for providing a written reminder of the expiry of a level 2 community treatment order to all persons who may have a proper interest in the welfare of the patient. This reminder applies to orders longer than 6 months, and must be sent no less than 2 months before the expiry of the order.

## What Are The Responsibilities Of The Guardianship Board Regarding Detention And Treatment Orders?

The Guardianship Board must acknowledge in writing within 1 business day, receipt of the notification from a psychiatrist or authorised medical practitioner of any detention and treatment orders being made, confirmed or revoked.

The Guardianship Board must notify the Chief Psychiatrist when any detention and treatment order is made, varied or revoked within 1 business day.

## What Is The Community Visitor Scheme?

The Mental Health Act provides for a Community Visitor Scheme, requiring that inspections of treatment centres be carried out. The Community Visitor Scheme must commence on or before 11 June 2011.

## What Are The Responsibilities Of Community Visitors?

Community visitors are responsible for:

- > Conducting visits to, and inspections of treatment centres as required
- > Referring matters of concern regarding the care, treatment or control of patients to the Minister, the Chief Psychiatrist or any other appropriate person
- > Advocating for patients to promote the proper resolution of issues relating to the care, treatment or control of patients, including issues raised by a guardian, carer, relative, friend or medical agent of the patient
- > Any other functions assigned to community visitors under the Mental Health Act or any other Act.

## Who Is Responsible For Governing The Number Of Community Visitors Appointed To The Community Visitor Scheme?

The Governor is responsible for determining the number of appointments to the Community Visitors Scheme.

## How Is A Person Appointed As A Community Visitor?

A person can be appointed to the position of a community visitor on conditions determined by the Governor.

## How Long Can A Person Be Appointed To The Position Of A Community Visitor?

A person can be appointed to the position of a community visitor for a maximum of 3 years, after which time they will be eligible for reappointment. A community visitor is able to hold the position for a maximum of 2 consecutive terms.

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## Under What Circumstances Can A Community Visitor Be Suspended Or Removed From The Position?

The Governor may suspend a person from the position of community visitor on the grounds of incompetence or misbehaviour, and a full statement of the reasons for the suspension must be laid before both Houses of Parliament within 3 sitting days of suspension.

The Governor may remove a person from the position of community visitor if both Houses of Parliament seek the person's removal.

If both Houses of Parliament have not sought the person's removal from the position of community visitor within 1 month of the suspension being laid before Parliament, the person must be re-instated to the position.

## How Can A Position Of Community Visitor Become Vacant?

The position of community visitor is considered vacant if the person appointed to the position:

- > Resigns by written notice given to the Minister
- > Completes a term of appointment and is not reappointed
- > Is removed from the position by the Governor at the request of both Houses of Parliament
- > Becomes bankrupt
- > Is convicted of an indictable offence or is imprisoned for an offence
- > Becomes a member of Parliament of South Australia or any other State of the Commonwealth, or becomes a member of a Legislative Assembly of a Territory of the Commonwealth
- > Becomes, in the opinion of the Governor, mentally or physically incapable of performing the functions of the position satisfactorily
- > Dies.

## How Can A Person Be Appointed To The Position Of Principal Community Visitor?

A person can be appointed to the position of Principal Community Visitor on conditions determined by the Governor.

The Minister may appoint a person to act in the position of Principal Community Visitor:

- > During a vacancy in the position
- > When the Principal Community Visitor is absent or unable to perform the functions of the position
- > If the Principal Community Visitor is suspended from the position.

## What Are The Responsibilities Of The Principal Community Visitor?

The Principal Community Visitor is responsible for:

- > Overseeing and coordinating the performance of community visitors
- > Advising and assisting community visitors in the performance of their functions
- > Reporting to the Minister regarding the performance of community visitor functions
- > Conducting visits to and inspections of treatment centres as required
- > Referring matters of concern regarding the care, treatment or control of patients to the Minister, the Chief Psychiatrist or any other appropriate person
- > Advocating for patients to promote the proper resolution of issues relating to the care, treatment or control of patients, including issues raised by a guardian, carer, relative, friend or medical agent of the patient
- > Any other functions assigned to community visitors under the Mental Health Act or any other Act.

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## How Are Treatment Centres Required To Be Inspected?

Each treatment centre must be visited and inspected once a month by 2 or more community visitors. Community visitors must:

- > Inspect all parts of the centre used for or relevant to the care, treatment or control of patients, where practicable
- > Make any necessary inquiries about the care, treatment or control of each patient detained or being treated in the centre, where practicable
- > Take any other action required under the regulations
- > Report findings of the inspection to the Principal Community Visitor in accordance with reporting requirements.

A visit and inspection of a treatment centre may be made with or without previous notice, and at any time of the day or night, and may be of such length as the community visitors deem appropriate.

## Can Community Visitors Inspect Hospitals?

Yes. A community visitor has the authority to conduct inspections of the premises and operations of any hospital that is an incorporated hospital under the Health Care Act 2008.

## Who Can Request To Meet With Community Visitors?

A request to meet with community visitors may be made by a patient, or a guardian, carer, relative, friend or medical agent of the patient.

If such a request is made to the director of a treatment centre in which the patient is being detained or treated, the director must advise a community visitor of the request within 2 days after receiving the request.

## Reports By The Principal Community Visitor

On, or before the 30 September each year, the Principal Community Visitor must forward a report to the Minister on the work of the community visitors during the previous financial year.

Within 6 sitting days of receiving the report, the Minister must have copies of the report laid before both Houses of Parliament.

The Principal Community Visitor may, at any time, prepare a special report to the Minister on any matter regarding the performance of community visitor functions.

Within 2 weeks of receiving a special report from the Principal Community Visitor, the Minister must have copies of the report laid before both Houses of Parliament. If Parliament is not sitting, the Minister must deliver copies of the report to the President and the Speaker. The President and the Speaker must then:

- > Immediately organise for the report to be published
- > Lay the report before their respective Houses as soon as possible.



For more information

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Non-English speaking: for information in languages other than English, call the Interpreting and Translating Centre and ask them to call the Department of Health. This service is available at no cost to you, contact (08) 8226 1990.

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