



# *Mental Health Act 2014*

## Information for non-government organisations

### PART A – OVERVIEW

The *Mental Health Act 2014* (the Act) will replace the *Mental Health Act 1996* on **30 November 2015**.

The Act provides for the treatment, care, rights and protection of people experiencing mental illness, particularly involuntary patients. Key changes include:

- streamlined processes for referral of a person for examination by a psychiatrist;
- shorter detention timeframes;
- new rights for families and carers;
- new safeguards for people of Aboriginal or Torres Strait Islander descent;
- special provisions for regional and remote areas;
- establishment of a new Mental Health Advocacy Service (to replace the Council of Official Visitors);
- establishment of a new Mental Health Tribunal (to replace the Mental Health Review Board).

For more information regarding the above changes, see the list of further resources in Appendix 2.

This document provides further targeted information for non-government organisations (NGOs) that provide services for consumers or carers. Although the Act will have the biggest impact on hospitals that treat people with mental illness, it will also impact on some NGOs.

The extent of the changes for an NGO will depend on whether or not the NGO is a 'community mental health service'. The checklist in Part B will help you work out whether any new requirements apply.



## PART B – CHECKLIST

### **Question 1:**

**Does the NGO provide any services for people who have or may have a mental illness, or to carers of people who have or may have a mental illness?**

- Yes  NGO is a mental health service provider. See Part C and Question 2.  
No  The Act does not apply.

### **Question 2:**

**If yes to Question 1, does the NGO provide psychosocial or psychological treatment for people with mental illness?**

- Yes  NGO may be a community mental health service. See Question 3.  
No  The NGO is not a community mental health service. Only Part C applies.

### **Question 3:**

**If yes to Question 2, does the NGO provide that treatment outside of a hospital setting?**

- Yes  The NGO may be a community mental health service. See Question 4.  
No  The NGO is not a community mental health service. Only Part C applies.

### **Question 4:**

**If yes to Question 3, is the treatment provided by a health professional in private practise? (a doctor, social worker, psychologist, occupational therapist)**

- Yes  The NGO is not a community mental health service. Only Part C applies.  
No  The NGO is a community mental health service. Parts C and D apply.



## **PART C – MENTAL HEALTH SERVICE PROVIDERS**

### **Charter of Mental Health Care Principles**

Mental health service providers must **make every effort to comply** with the Charter of Mental Health Care Principles set out in the Act (see Appendix 1). The Charter relates to the many factors that facilitate recovery from mental illness, including attitudes towards people with mental illness, the importance of a person-centred approach; diversity; co-occurring needs; the importance of support networks, accommodation, recreation and employment; provision of information about rights; involvement of other people; and accountability and continuous improvement.

### **Complaints about mental health service providers**

A consumer or carer, or their representative, may complain to an NGO mental health service provider, or to the Health and Disability Services Complaints Office (HaDSCO) on certain grounds. These include where the NGO:

- has unreasonably refused to provide a person to the person;
- has acted unreasonably in the way the service is provided;
- has not had regard to the Charter of Mental Health Care Principles;
- has not had regard to the Charter in the Carers Recognition Act; or
- has not properly investigated an internal complaint or taken appropriate action.

NGO mental health service providers **must have internal complaints procedures**.

Note: the above information regarding complaints does not apply to NGOs that are wholly funded by the Commonwealth Government.

### **Information sharing**

#### ***Between mental health service providers***

To promote timely and quality service delivery, and to facilitate continuity of care, the Act allows information sharing between the heads of mental health service providers. Certain information regarding consumers can be shared without the need for consent from the consumer, and without breaching confidentiality laws. The information that can be shared between mental health service providers is information relevant to the treatment, care, health, safety or wellbeing of a consumer (or to the safety of another person) who receives services from the mental health service provider.



***Between the mental health service provider and the Mental Health Commission***

An NGO mental health service provider that is funded wholly or partly by the State Government to provide services for consumers or carers can share certain information with the Mental Health Commission, without the need for consent from the consumer or carer, and without breaching confidentiality laws. The information that can be provided is information relevant to any of the following:

- the treatment, care, health, safety or wellbeing of a consumer (or to the safety of another person);
- the administration or enforcement of the Act;
- the implementation and evaluation of programs managed by the Commission;
- the planning for, and evaluation of, mental health services; or
- epidemiological analysis of mental illness and mental health research.



## **PART D – COMMUNITY MENTAL HEALTH SERVICES**

### **Provision of treatment**

Before providing psychosocial or psychological treatment, or before changing the kind of treatment being provided, the community mental health service must explain the treatment to the consumer. Treatment can only be provided with consent. If the consumer is well enough, he or she can provide consent. However, if the consumer is too unwell, does not understand the information that has been explained, or is unable to consent for some other reason, then another person (such as a guardian, a carer or the Public Advocate) may be able to consent on the consumer's behalf. Provision of informed consent must be recorded and filed on the consumer's medical record.

### **Medical records and access to documents**

Community mental health services must keep a medical record for every person provided with treatment or care by the service. The medical record must be in the form approved by the Chief Psychiatrist (see Appendix 2 for further information). A consumer is entitled to request access to his or her medical record and other relevant documents at any time. The community mental health service must provide the information unless this would reveal personal information about another person, or reveal confidential information. Where information is withheld, the consumer may nominate a doctor or lawyer to access the information on their behalf, and then the information must be provided. The doctor or lawyer cannot disclose the information to the consumer.

### **Identifying, informing and involving personal support persons**

#### ***Identifying personal support persons***

When a consumer is first received at a community mental health service, the service must assist the consumer to try to identify one or more personal support persons. A personal support person means:

- the parent or guardian of a child;
- the guardian or enduring guardian of an adult;
- a close family member;
- a carer; or
- a nominated person.

A consumer can legally nominate a person (such as a friend) to be their nominated person by filling out the Chief Psychiatrist's approved form (for information about accessing the form, see Appendix 2). The role of a nominated person is to help the consumer uphold their rights under the Act.



### ***Informing close family members, carers and nominated persons***

The Act recognises the important role that close family members and carers have in a person's recovery from mental illness. Close family members and carers must be kept informed, unless the consumer is well enough to decide that they do not want them to be informed and they refuse, or provision of information would not be in the consumer's best interests.

The information to be provided is:

- the consumer's diagnosis;
- proposed treatment and care;
- treatment options;
- the consumer's progress; and
- other services available to meet the consumer's needs.

Where a consumer has a nominated person, the nominated person must be provided with the same kinds of information, unless this would not be in the best interests of the consumer.

### ***Involving close family members, carers and nominated persons***

A close family member, carer or nominated person who is entitled to information must also be given the opportunity to be involved in exploring treatment options and in providing support to the consumer.

### **Mandatory reporting to the Chief Psychiatrist**

A staff member of a community mental health service who becomes aware of the use of unreasonable force by a staff member against a consumer, or of unlawful sexual contact between a staff member and a consumer ('reportable incidents'), must report this to the person in charge of the service or to the Chief Psychiatrist. Failure to report is an offence.

Where the person in charge of a community mental health service becomes aware of any of the following must report to the Chief Psychiatrist:

- a reportable incident;
- the death of a consumer who was receiving treatment or care from the service;
- any other incident in connection with the provision of treatment or care to the person that has had, or is likely to have, an adverse effect on the person.

The report must be made using the Chief Psychiatrist's approved form (for information about accessing the form, see Appendix 2).



## Appendix 1: Charter of Mental Health Care Principles

### **Purpose**

The Charter of Mental Health Care Principles is a rights based set of principles that mental health services must make every effort to comply with in providing treatment, care and support to people experiencing mental illness. The Charter is intended to influence the interconnected factors that facilitate recovery from mental illness.

### **Principle 1: Attitude towards people experiencing mental illness**

A mental health service must treat people experiencing mental illness with dignity, equality, courtesy and compassion and must not discriminate against or stigmatise them.

### **Principle 2: Human rights**

A mental health service must protect and uphold the fundamental human rights of people experiencing mental illness and act in accordance with the national and international standards that apply to mental health services.

### **Principle 3: Person centred approach**

A mental health service must uphold a person centred focus with a view to obtaining the best possible outcomes for people experiencing mental illness, including by recognising life experiences, needs, preferences, aspirations, values and skills, while delivering goal oriented treatment, care and support.

A mental health service must promote positive and encouraging recovery focused attitudes towards mental illness, including that people can and do recover, lead full and productive lives and make meaningful contributions to the community.

### **Principle 4: Delivery of treatment, care and support**

A mental health service must be easily accessible and safe and provide people experiencing mental illness with timely treatment, care and support of high quality based on contemporary best practice to promote recovery in the least restrictive manner that is consistent with their needs.

### **Principle 5: Choice and self determination**

A mental health service must involve people in decision making and encourage self-determination, cooperation and choice, including by recognising people's capacity to make their own decisions.

### **Principle 6: Diversity**

A mental health service must recognise, and be sensitive and responsive to, diverse individual circumstances, including those relating to gender, sexuality, age, family, disability, lifestyle choices and cultural and spiritual beliefs and practices.

### **Principle 7: People of Aboriginal or Torres Strait Islander descent**

A mental health service must provide treatment and care to people of Aboriginal or Torres Strait Islander descent that is appropriate to, and consistent with, their cultural and spiritual beliefs and practices and having regard to the views of their families and, to the extent that it is practicable and



appropriate to do so, the views of significant members of their communities, including elders and traditional healers, and Aboriginal or Torres Strait Islander mental health workers.

**Principle 8: Co-occurring needs**

A mental health service must address physical, medical and dental health needs of people experiencing mental illness and other co-occurring health issues, including physical and intellectual disability and alcohol and other drug problems.

**Principle 9: Factors influencing mental health and wellbeing**

A mental health service must recognise the range of circumstances, both positive and negative, that influence mental health and wellbeing, including relationships, accommodation, recreation, education, financial circumstances and employment.

**Principle 10: Privacy and confidentiality**

A mental health service must respect and maintain privacy and confidentiality.

**Principle 11: Responsibilities and dependants**

A mental health service must acknowledge the responsibilities and commitments of people experiencing mental illness, particularly the needs of their children and other dependants.

**Principle 12: Provision of information about mental illness and treatment**

A mental health service must provide, and clearly explain, information about the nature of the mental illness and about treatment (including any risks, side effects and alternatives) to people experiencing mental illness in a way that will help them to understand and to express views or make decisions.

**Principle 13: Provision of information about rights**

A mental health service must provide, and clearly explain, information about legal rights, including those relating to representation, advocacy, complaints procedures, services and access to personal information, in a way that will help people experiencing mental illness to understand, obtain assistance and uphold their rights.

**Principle 14: Involvement of other people**

A mental health service must take a collaborative approach to decision making, including respecting and facilitating the right of people experiencing mental illness to involve their family members, carers and other personal support persons in planning, undertaking, evaluating and improving their treatment, care and support.

**Principle 15: Accountability and improvement**

A mental health service must be accountable, committed to continuous improvement and open to solving problems in partnership with all people involved in the treatment, care and support of people experiencing mental illness, including their family members, carers and other personal and professional support persons.





## Appendix 2: Further resources

eLearning packages:	<a href="http://www.mhc.wa.gov.au">www.mhc.wa.gov.au</a>
Clinicians' Practice Guide:	<a href="http://www.chiefpsychiatrist.wa.gov.au">www.chiefpsychiatrist.wa.gov.au</a>
Mental Health Act Handbook:	<a href="http://www.mhc.wa.gov.au">www.mhc.wa.gov.au</a>
Chief Psychiatrist's standards and guidelines:	<a href="http://www.chiefpsychiatrist.wa.gov.au">www.chiefpsychiatrist.wa.gov.au</a>
Chief Psychiatrist's approved forms:	<a href="http://www.chiefpsychiatrist.wa.gov.au">www.chiefpsychiatrist.wa.gov.au</a>
Enquiries to the Mental Health Commission:	<a href="mailto:legislation@mhc.wa.gov.au">legislation@mhc.wa.gov.au</a>