



Queensland Government
Queensland Health

Mental Health Act 2000



Brief guide to the Act

Overview

Purpose

This brief guide to the Act provides a quick reference to the main provisions and processes under the mental health legislation. It has been designed to give an overview only, and should be read in conjunction with the *Mental Health Act 2000*.

The guide is intended for use by anyone who needs a day-to-day understanding of the mental health legislation.

Background

Queensland Parliament passed the *Mental Health Act 2000* on 30 May 2000, which replaces the *Mental Health Act 1974*.

The Act contains provisions for initiating involuntary assessment, authorising involuntary treatment, independent review of involuntary treatment and patient rights. It provides processes for admission of mentally ill offenders from court or custody and decisions about criminal responsibility where the person has a mental illness or intellectual disability. It also introduces notification orders and non-contact provisions for persons such as family members and victims of crime, as well as other provisions addressing community safety.

Under the *Mental Health Act 2000* decision-making processes have been designed to ensure transparency and accountability.

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Principles and definitions

Chapter 1 of the *Mental Health Act 2000* deals with the purpose and application of the legislation. It contains a statement of principles to guide the use of powers under the Act. Key concepts are also defined.

What is the purpose of the Mental Health Act?

The *Mental Health Act 2000* provides for the involuntary assessment and treatment, and the protection, of persons having a mental illness while at the same time safeguarding their rights. The Act focuses on the aspects of mental illness that cannot be dealt with in other mainstream legislation.

The Mental Health Act does not specifically provide for voluntary treatment of mental illness. Voluntary treatment for mental illness should be regarded in the same way as treatment for any other illness, with the protection of rights in other mainstream legislation.

The Act also provides for the determination of a person's mental state when they have a mental illness and have been charged with a criminal offence, as well as their detention in a mental health service if necessary.

Why have principles?

The principles are intended to underpin any decisions made, or actions carried out, under the Act. As a result, all users of the legislation should be familiar with the principles. They are consistent with national and international policy and principles, as well as other Queensland legislation (ie the *Guardianship and Administration Act 2000* and the *Powers of Attorney Act 1998*).

What are the principles?

- The Mental Health Act is based on principles that respect basic human rights and ensure, to the greatest extent practicable, a person's participation in decisions made about them under the Act.
- The particular needs and circumstances of the person are to be taken into account, including the particular cultural, religious and language needs.
- Treatment given under the Act can only be provided if it is appropriate to promote and maintain the person's mental health and wellbeing.

- A person's right to confidentiality must be recognised and taken into account, subject to specific provisions in this and other relevant legislation.
- Any power or function exercised under the Act must be exercised so that a person's liberty and rights are affected only if there is no less restrictive way to protect the person's health and safety or to protect others.
- If the person's liberty or rights are to be affected, the effect is to be the minimum necessary in the circumstances.

Definitions

The legislation contains a list of definitions in a dictionary at the back of the Act. Some of the key terms are also defined in chapter 1. The first of these is the definition of mental illness. Other key defined terms are set out in the glossary.

Why is mental illness defined?

Mental illness is broadly defined to establish when the legislation applies. The definition is adapted from the national model mental health legislation and the *United Nations Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care*.

It is important to understand that a person cannot be assessed or treated for mental illness without their consent just because they meet the definition of mental illness. The person must also meet the strict assessment or treatment criteria as provided under the Act.

What is the definition?

Mental illness is defined as—

"a condition characterised by a clinically significant disturbance of thought, mood, perception or memory".

The decision must be made in accordance with internationally accepted medical standards.

The new Act also provides eleven exclusions from the definition. These exclusions are behaviours, conditions or circumstances that cannot, on their own, be considered mental illness. For example a person's race, previous treatment for mental illness or antisocial or illegal behaviour.

What is the effect of the exclusions?

The presence of one or more of the exclusions does not prevent a person from having a mental illness. For example:

- a person may have a mental illness that is caused by drugs or alcohol, whereas the taking of drugs or alcohol alone cannot be considered a mental illness
- a person will not be excluded from the definition if they have a dual diagnosis (eg a mental illness and an intellectual disability). However, an intellectual disability on its own is excluded from the definition of mental illness.

These provisions ensure that services are not denied to people who would benefit from treatment of their mental illness. However the application of the legislation is limited to those with a genuine mental illness and for whom involuntary treatment in a mental health service would be effective.



Involuntary assessment

The *Mental Health Act 2000* provides access to involuntary assessment for mental illness. Under the Act the process for initiating and conducting involuntary assessment is streamlined. A significant safeguard within the Act is the separation of the processes for authorising involuntary assessment and involuntary treatment.

How is the involuntary assessment process started?

Two assessment documents, a *request for assessment* and a *recommendation for assessment*, must be made before a person can be assessed without their consent.

A *request for assessment* can be made by any adult who, having seen the person within the last 3 days, believes the person has a mental illness of a nature or to an extent that involuntary assessment is necessary.

A *recommendation for assessment* can be made by any doctor or an authorised mental health practitioner who has examined the person in the last 3 days. The doctor or authorised mental health practitioner must be satisfied that all of the assessment criteria apply (see flowchart below). The recommendation is effective for 7 days.

What safeguards are there in this process?

Different people must make the request and recommendation. In addition, the person making the request cannot be a relative or employee of the person making the recommendation. Finally the Act provides for the application of penalties for providing false information.

What happens once the request and recommendation have been made?

A health practitioner or an ambulance officer can take the person to an authorised mental health service for assessment. Police are not automatically involved in this process but their assistance must be provided if requested.

What if the assessment documents cannot be made?

Two options are available to enable a person to be examined to determine if the documents should be made:

- A *justices examination order* may be made by a justice of the peace (qualified) or magistrate. The justices examination order is valid for up to 7 days and is forwarded directly to the authorised mental health

service. The justices examination order empowers a doctor or authorised mental health practitioner to go to where the person in the order is located and conduct an examination to decide if a recommendation for assessment should be made. The person can only be taken to an authorised mental health service if the assessment documents are made.

- An *emergency examination order* can be made by a police officer, ambulance officer or a psychiatrist when strict criteria are met (sections 33 & 37 of the Act). An emergency examination order authorises a person to be taken to an authorised mental health service and be detained for up to 6 hours to determine if the assessment documents can be made (by a doctor or authorised mental health practitioner). If the assessment documents are not made, arrangements must be made for the person to be returned to where they were taken from, or to a place the person reasonably asks to be taken.

Where can involuntary assessment occur?

Depending on local arrangements, the involuntary assessment could occur in a hospital or community facility of an authorised mental health service. Where there is no authorised mental health service readily accessible (e.g. in rural or remote areas) the person can be assessed or examined in a public hospital. It is important to note that the person can only receive involuntary in-patient treatment at an authorised mental health service.

What happens when the person has been taken to the authorised mental health service?

At this point the person becomes an involuntary patient. This means they may be assessed without their consent. It also means that they must be informed of any changes to their involuntary status and have their rights explained to them. In addition they can nominate an allied person to help represent their views, and have access to a health practitioner or legal adviser of their choosing (see *Patient Rights*).

How long is the involuntary assessment period?

Once the assessment documents have been completed the person may be detained at the authorised mental health service for up to 24 hours. This can be further extended by an authorised doctor for further periods of up to 24 hours. The maximum period for assessment is 72 hours. The time is calculated from the time the patient is accepted on arrival at the AMHS.

What is the purpose of the involuntary assessment?

The purpose is to determine if the person requires involuntary treatment. The assessment is made by an authorised doctor who must decide whether the treatment criteria apply.

If all of the criteria apply, an involuntary treatment order can be made to authorise the involuntary treatment of a person (see *Involuntary Treatment*).

What happens if at the end of the assessment period an involuntary treatment order has not been made?

The person is no longer an involuntary patient and may only be assessed or treated with their consent.

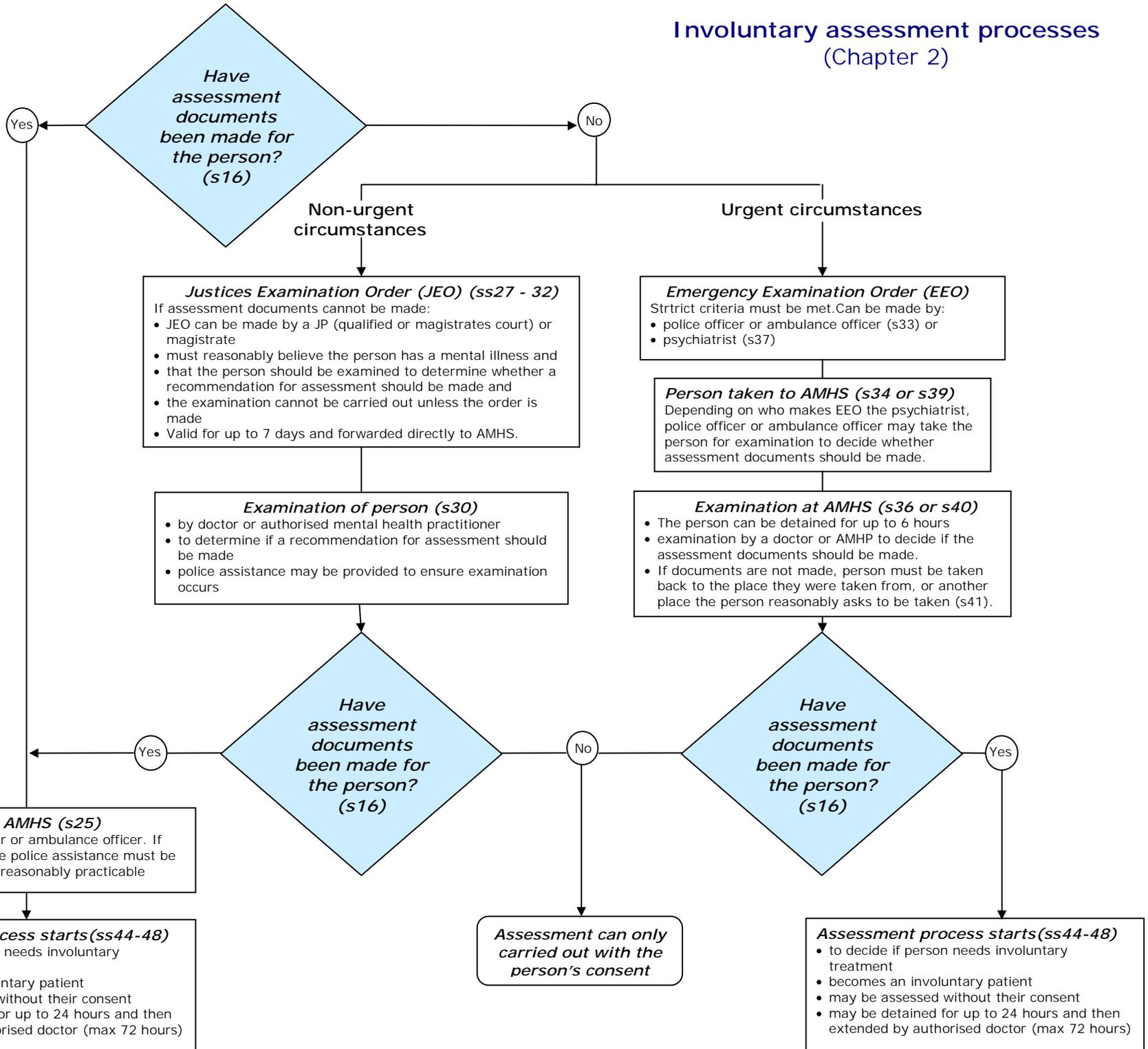


Involuntary assessment processes (Chapter 2)

Assessment Criteria (s13)

All of the following must be met for a person based on the available information:

- the person appears to have a mental illness;
- the person requires immediate assessment;
- the assessment can properly be made at an authorised mental health service;
- there is a risk that the person may:
 - cause harm to himself or herself or someone else; or
 - suffer serious mental or physical deterioration;
- there is no less restrictive way of ensuring the person is assessed; and
- the person
 - is lacking the capacity to consent to be assessed; or
 - has unreasonably refused to be assessed.



Justices Examination Order (JEO) (ss27 - 32)
 If assessment documents cannot be made:

- JEO can be made by a JP (qualified or magistrates court) or magistrate
- must reasonably believe the person has a mental illness and that the person should be examined to determine whether a recommendation for assessment should be made and
- the examination cannot be carried out unless the order is made
- Valid for up to 7 days and forwarded directly to AMHS.

Emergency Examination Order (EEO)
 Strict criteria must be met. Can be made by:

- police officer or ambulance officer (s33) or
- psychiatrist (s37)

Person taken to AMHS (s34 or s39)
 Depending on who makes EEO the psychiatrist, police officer or ambulance officer may take the person for examination to decide whether assessment documents should be made.

Examination of person (s30)

- by doctor or authorised mental health practitioner
- to determine if a recommendation for assessment should be made
- police assistance may be provided to ensure examination occurs

Examination at AMHS (s36 or s40)

- The person can be detained for up to 6 hours
- examination by a doctor or AMHP to decide if the assessment documents should be made.
- If documents are not made, person must be taken back to the place they were taken from, or another place the person reasonably asks to be taken (s41).

Person taken to AMHS (s25)
 by health practitioner or ambulance officer. If requested reasonable police assistance must be provided as soon as reasonably practicable

Assessment process starts (ss44-48)

- to decide if person needs involuntary treatment
- becomes an involuntary patient
- may be assessed without their consent
- may be detained for up to 24 hours and then extended by authorised doctor (max 72 hours)

Assessment can only be carried out with the person's consent

Assessment process starts (ss44-48)

- to decide if person needs involuntary treatment
- becomes an involuntary patient
- may be assessed without their consent
- may be detained for up to 24 hours and then extended by authorised doctor (max 72 hours)

Involuntary treatment

Under the *Mental Health Act 2000* the process for authorising involuntary treatment is separate to the process of authorising involuntary assessment. The Act sets out how involuntary treatment is authorised and who is empowered to make this decision.

How is involuntary treatment authorised under the Act?

An involuntary treatment order authorises involuntary treatment for mental illness. An involuntary treatment order can be made if an authorised doctor is satisfied that all the criteria for involuntary treatment apply (see below). Although set out in a similar way to the assessment criteria, a stricter test must be met to authorise involuntary treatment.

Does a psychiatrist have to authorise involuntary treatment?

In all cases involuntary treatment must be authorised or confirmed by a psychiatrist. If the involuntary treatment order is initially made by an authorised doctor who is not a psychiatrist, the involuntary treatment order must be confirmed by an authorised psychiatrist within 72 hours.

Can a person be examined via videoconference?

The Act recognises the importance of video-conference facilities in providing greater access to specialist mental health services for people in rural or remote locations. An important safeguard is that at least one examination must be made in-person when making an involuntary treatment order.

Treatment Criteria (s14)

The treatment criteria for a person, are all of the following—

- the person has a mental illness;
- the person's illness requires immediate treatment;
- the proposed treatment is available at an authorised mental health service;
- because of the person's illness—
 - there is an imminent risk that the person may cause harm to himself or herself or someone else; or
 - the person is likely to suffer serious mental or physical deterioration;
- there is no less restrictive way of ensuring the person receives appropriate treatment for the illness; and
- the person—
 - lacks the capacity to consent to be treated for the illness; or
 - has unreasonably refused proposed treatment for the illness.

Can a person receive community-based treatment?

On making an involuntary treatment order, an authorised doctor must specify the category of the order: in-patient or community. This decision is based on whether or not the person needs in-patient treatment. The community category provides for the involuntary treatment of a person living in the community.

What is the effect of an involuntary treatment order?

Under an involuntary treatment order, a person can be treated for mental illness without consent in a variety of settings. However, as a safeguard, an in-patient or community facility of an authorised mental health service is the only place where force can be used to give involuntary treatment.

The treatment plan

The involuntary treatment order must be accompanied by a treatment plan that outlines the:

- proposed treatment
- treatment frequency
- method and place of treatment
- rehabilitation and other services to be provided
- intervals for regular assessment.

What input does the patient have in the treatment plan?

The treatment plan must, as far as it is practical, be discussed with the patient. Any changes made to the treatment plan must similarly be discussed with the patient. In addition, the treatment plan must be developed with consideration of any existing treatment plan or advance health directive.

What if a patient does not comply with the treatment plan?

A patient under the community category of an involuntary treatment order may be ordered, by written notice, to attend the authorised mental health service for treatment on a stated day and time. If the patient does not comply with the order, the patient may be taken to the authorised mental health service. After the treatment is given, the patient is returned home.

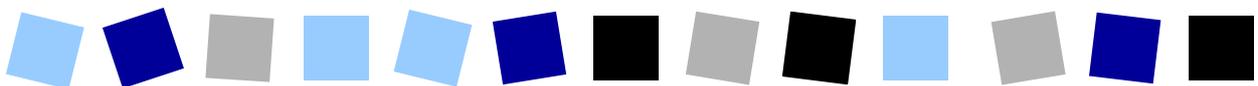
The Act also provides a separate process, under chapter 14, for returning an in-patient to an in-patient facility.

For how long is an involuntary treatment order in force?

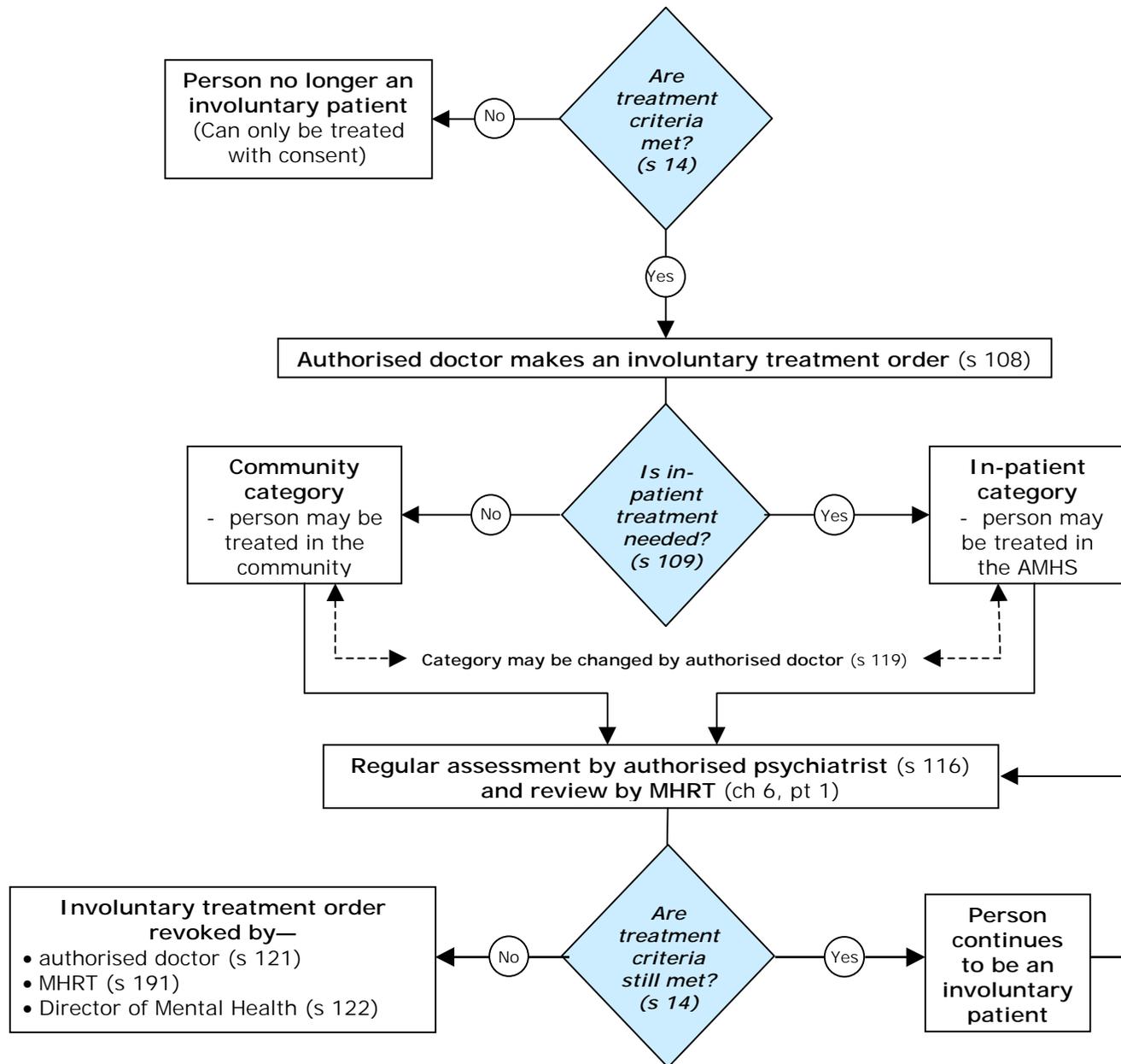
An involuntary treatment order does not need to be renewed. However, an authorised doctor, the Director of Mental Health or the Mental Health Review Tribunal can revoke an involuntary treatment order at any time. Regular reviews are conducted by the psychiatrist as outlined in the treatment plan. In addition, reviews by the Mental Health Review Tribunal occur within 6 weeks of an involuntary treatment order being made and then at 6 monthly intervals or on application (see *Mental Health Review Tribunal*).

What is limited community treatment?

Limited community treatment is an active process that enables an in-patient to receive short periods of treatment in the community. It provides the patient with a process of transition to the community prior to discharge from hospital. Limited community treatment is approved by the authorised doctor and documented in the treatment plan. In addition, the authorised doctor may state conditions for the limited community treatment.



Involuntary treatment (Chapter 4)



When second examination is required (s 112)

- A psychiatrist must conduct a second examination of the person within 72 hours if —
 - the authorised doctor who makes the ITO is not a psychiatrist; or
 - the ITO is initially made on the basis of an assessment carried out by audio visual link
- If the psychiatrist is not satisfied the person meets the treatment criteria, the person ceases to be an involuntary patient

Classified patients

Under the *Mental Health Act 2000* a person admitted to an authorised mental health service from court or custody will become a *classified patient*. Chapter 3 sets out the requirements for becoming a classified patient and how this status ends.

What is the purpose of the classified patient provisions?

The purpose is to ensure the secure management of the person while still ensuring the person has access to treatment for their mental illness. Importantly, the classified patient provisions do not deal with how charges are decided. See *Forensic Provisions* for more information.

What do the provisions authorise?

The classified patient provisions authorise a person's detention in an authorised mental health service for involuntary assessment and/or treatment. However, the provisions do not authorise involuntary treatment.

A classified patient can be admitted to any authorised mental health service (including a high security unit). Where the person receives assessment and treatment will depend on the facilities available, the mental health treatment required for the person and the person's security needs.

Who can become a classified patient?

The process applies to persons detained in custody, or before a court, serving a term of imprisonment or detention. The provisions apply to both adults and young persons, as well as persons charged with state or Commonwealth offences. The provisions do not apply where a person is granted bail and then admitted to an authorised mental health service.

What documents are required?

Three documents are required to authorise a classified patient's transfer to an authorised mental health service.

1. *Recommendation for assessment* – made by a doctor or an authorised mental health practitioner if satisfied the assessment criteria (section 13) are met for the person. However, an important distinction is that a person may become a classified patient, even if they can consent to assessment or treatment.
2. *Agreement for assessment* – made by the administrator of the authorised mental health service or the Director of Mental Health.
3. *Court assessment order or custodian's assessment authority* – either a court or the person's custodian must be satisfied that the person should be detained in an authorised mental health service for assessment.

What happens once the documents are made?

The person is taken to the authorised mental health service by a police officer, correctional officer or detention centre officer as soon as practicable after the documents are made. Within 3 days after the person becomes a classified patient, an authorised doctor must make an assessment of the person.

What is the purpose of the assessment?

The purpose of the assessment is to decide if the patient needs treatment for their mental illness in an authorised mental health service as a classified patient. The patient is then assessed at regular intervals to decide if the patient needs to continue to be detained as a classified patient.

What is the status of any outstanding charges?

On becoming a classified patient, proceedings for charges against the person are suspended until the person ceases to be a classified patient. However, proceedings for Commonwealth offences can continue if the patient is fit to appear.

How can treatment for mental illness be given?

A classified patient may be treated either with the patient's consent or, if an authorised doctor is satisfied the treatment criteria apply, under an involuntary treatment order, in the same way as other involuntary patients. (see *Involuntary Treatment*).

Limited community treatment

A classified patient can only receive treatment as an in-patient of the authorised mental health service. However, the patient can undertake limited community treatment, which is a process that enables in-patients to receive closely monitored treatment in the community. As a safeguard, the Director of Mental Health must provide written approval before a classified patient can undertake limited community treatment. Also, a classified patient who is serving a term of imprisonment or detention must be accompanied by health service staff if undertaking limited community treatment.

How does classified patient status end?

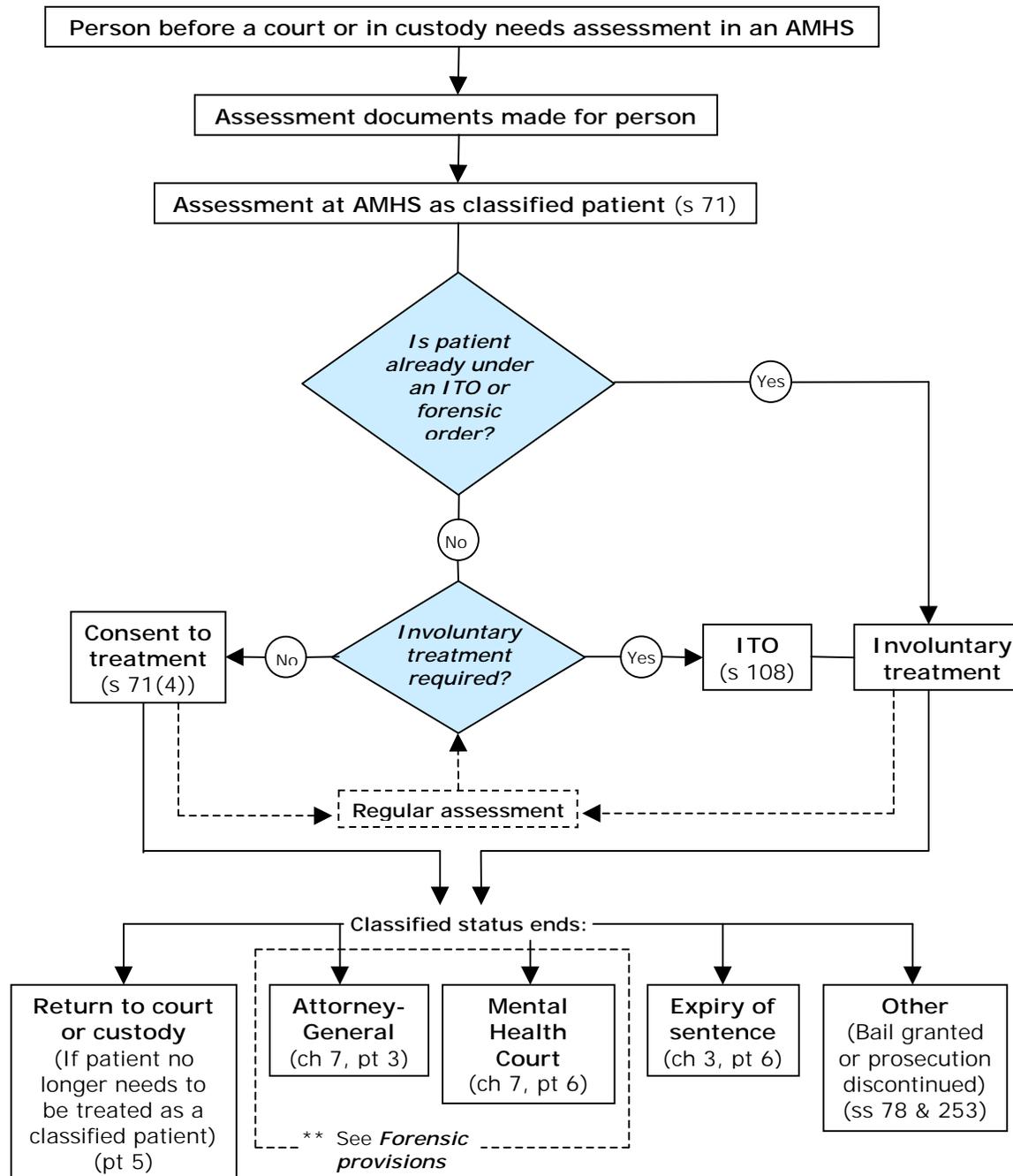
If an authorised doctor reports to the Director of Mental Health that the person no longer needs treatment as a classified patient in an authorised mental health service, the person is returned to court or custody. Similarly, if a classified patient who is consenting to treatment (and does not meet the treatment criteria) requests discharge from hospital, the person is returned to court or custody.

Classified patient status also automatically ends if:

- bail is granted
- proceedings against the person are discontinued or withdrawn
- Commonwealth offences are fully decided
- a period of imprisonment or detention under a court order ends or parole is granted
- a decision is made by the Attorney-General or Mental Health Court.



Classified patients (Chapter 3)



Assessment documents for chapter 3 —

- (a) Court assessment order (pt 2) or custodian's assessment authority (pt 3)
- (b) Recommendation for assessment (pt 1)
- (c) Agreement for assessment (pt 1)

Forensic provisions

The *Mental Health Act 2000* contains a system for deciding criminal responsibility where a person has a mental illness or an intellectual disability. It also provides for the detention, involuntary treatment and review of mentally ill offenders. The Act ensures that decisions balance the patient's right to treatment and the community's right to safety.

When do the forensic provisions apply?

Generally, the process begins when a person is under an involuntary treatment order or a forensic order, and at the same time, is charged with an offence. At this time, the Director of Mental Health is notified and legal proceedings are suspended. Within 21 days, the person's treating psychiatrist must give a report to the Director of Mental Health.

Is the person's treatment affected during this period?

If the person is granted bail, or is released without having to enter into a bail undertaking, there is *no change* to the person's treatment status. However, a person may be admitted directly from court or custody to a mental health service as a *classified patient* (see *Classified Patients*).

What happens to the legal proceedings?

The Director of Mental Health must either refer the matter to the Attorney-General or Mental Health Court for a decision as set out below. Also, a person, their legal representative, the Attorney-General or the Director of Public Prosecutions may make a reference to the Mental Health Court. If involuntary treatment is stopped during this process, legal proceedings are automatically re-started unless a reference has already been made to the Mental Health Court. In this case, an application can be made to the Court to have the reference withdrawn.

What does the Attorney-General decide?

The Attorney-General can decide simple offences and indictable offences that are not of a serious nature with regard to any damage, injury or loss caused. The Attorney-General can:

- discontinue proceedings
- direct that proceedings continue
- refer the matter to the Mental Health Court (if indictable offence)

The Attorney-General can decide to return the matter to court, even if the person continues to receive involuntary treatment. However, the matter cannot be returned to court if the person is unfit for trial. In this case, the Director of Mental Health may defer making a reference to the Attorney-General for 2 months if the person is likely to become fit for trial.

Does the decision affect the person's treatment?

No. The person can continue to receive involuntary treatment under the original authority (eg. an involuntary treatment order).

What is the Mental Health Court?

The Mental Health Court is constituted by a Supreme Court judge. The Judge is assisted by 2 experienced psychiatrists who advise the court on medical or psychiatric matters.

The Court has inquisitorial powers that enable the Judge to investigate the issues fully, and to accept material that may otherwise be inadmissible in other court proceedings. Hearings are generally open to the public.

If the facts of a case are disputed (and the person is fit for trial), the matter must be returned to a criminal court.

What does the Court decide?

The Mental Health Court can decide indictable offences and simple offences with which the person is also charged.

The Court decides whether a person:

- was of unsound mind
- was of diminished responsibility (if the charge is murder)
- is unfit for trial (and if the unfitness for trial is permanent).

What is the effect of the decision?

If the Mental Health Court decides a person was not of unsound mind, and is fit for trial, the matter is returned to a criminal court.

If the Mental Health Court decides a person was of unsound mind, or is unfit for trial, it can make a *forensic order*. Under the order a person can be detained in an authorised mental health service or, in some cases a high security unit, for treatment or care. The Court also has the power to order limited community treatment, which enables the person to reside in the community with active monitoring by a mental health service.

How are forensic patients reviewed?

The Mental Health Review Tribunal (see *Mental Health Review Tribunal*) conducts a review of the patient every 6 months or on application.

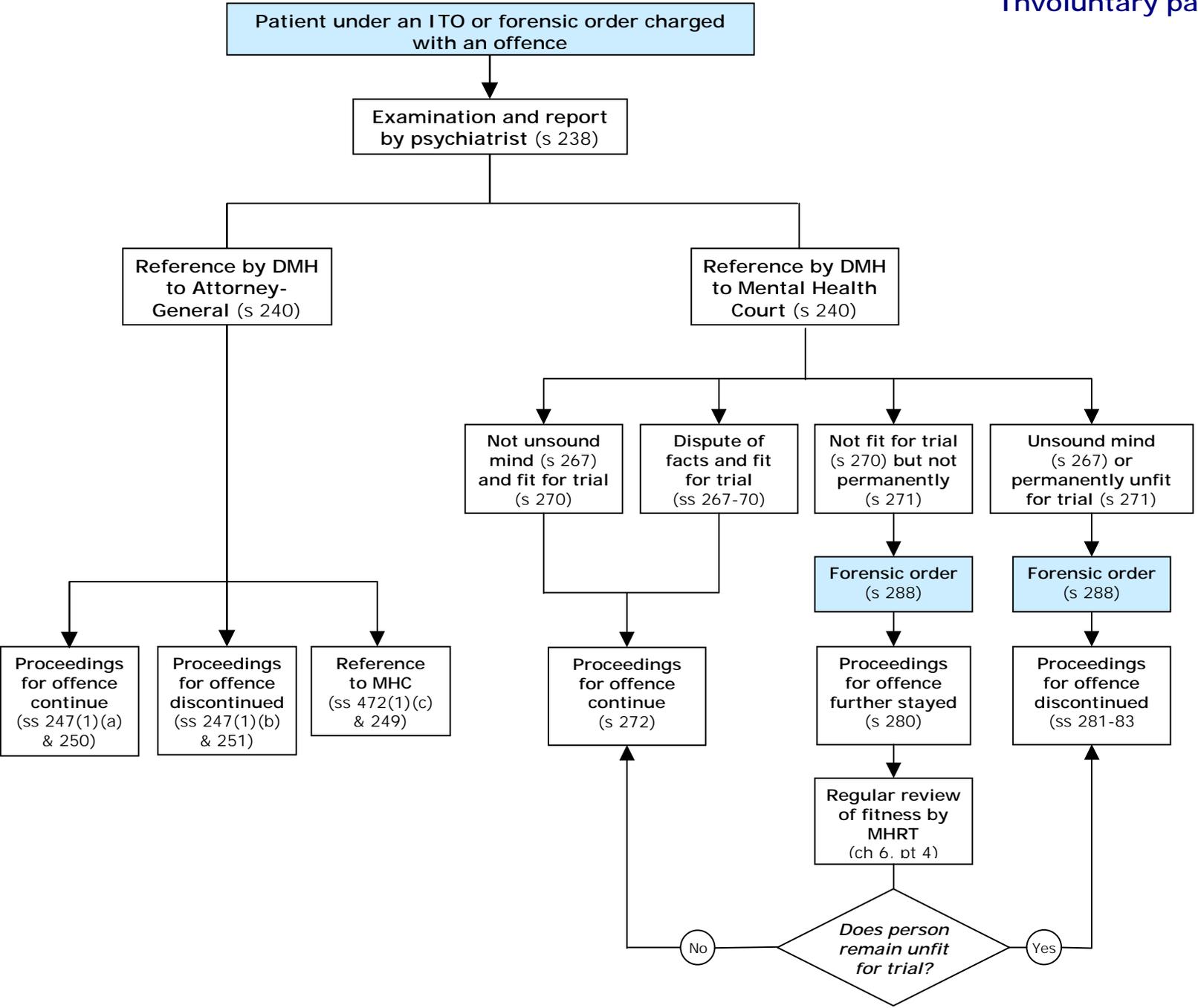
The Tribunal has the power to revoke the forensic order, approve limited community treatment, or order the patient's transfer. A strict test must be met and the Tribunal is required to take into account factors such as the patient's treatment and security needs and the safety of the community.

How is fitness for trial reviewed?

The Mental Health Review Tribunal reviews fitness for trial every 3 months for the first 12 months, and afterwards at 6-month intervals. Proceedings are discontinued if the person remains unfit for trial for 3 years. However, this period is extended to 7 years where the person is charged with offences carrying a sentence of life imprisonment.



Involuntary patients charged with offences (Chapter 7)



This part (ch 7, pt 2) ceases to apply if:

- ITO is revoked (ss 121, 122 & 191); or
- patient ceases to be forensic patient (ss 207 & 219).

Proceedings for offence will continue (s 245) unless prosecution discontinued (s 244(b)).

When proceedings are discontinued if person remains unfit for trial:

- after 7 years if the accused is charged with an offence with a maximum sentence of life imprisonment; or
- after 3 years in any other case.

Patient rights

The *Mental Health Act 2000* improves patient rights by:

- providing greater safeguards for the use of involuntary provisions
- increasing patient involvement in decisions affecting them
- reducing review timeframes
- improving the quality and increasing the number of independent reviews of a patient's involuntary treatment.

Background

The *Mental Health Act 2000* conforms to the *United Nations Principles for the Protection of Persons with a Mental Illness and for the Improvement of Mental Health Care*. These principles provide for the protection of the rights of people with a mental illness.

Additionally, the new Act:

- was developed with considerable input from consumers and carers
- is consistent with the National Standards for Mental Health Services.

Where are patient rights set out in the Act?

Patient rights are set out at important stages throughout the Act, as well as in the following chapters:

- Chapter 1 sets out the principles that underpin the Act and patient rights flow from these principles
- Chapters 6 and 12 set out the processes for patient reviews and the details of the Mental Health Review Tribunal
- Chapter 9 sets out specific patient rights.

What information must be provided at key times?

If reasonable and practicable in the circumstances, a person must be informed of the following:

- that the assessment documents are in force and what this means
- that an involuntary treatment order has been made
- the category of the involuntary treatment order
- the doctor's reasons for his/her decision to make the involuntary treatment order

- the details of the treatment plan and proposed treatment
- any changes to the treatment plan.

What is an involuntary patient?

A person becomes an involuntary patient when they are detained for assessment at an authorised mental health service. This continues if an involuntary treatment order is made.

Who is the Allied Person?

An involuntary patient can choose a person to be their allied person. The allied person's role is to help the patient represent their views, wishes and interests about assessment, detention and treatment under the Act.

The allied person is:

- notified of the patient's involuntary admission
- notified of reviews and treatment applications for the patient
- able to attend hearings of the Mental Health Review Tribunal to assist the patient (see *Mental Health Review Tribunal*)
- able to apply to the Mental Health Review Tribunal on behalf of a person under an involuntary treatment order.

A patient's guardian or attorney must also be notified at key times in the assessment, treatment and review process.

What is the statement of rights?

The Director of Mental Health is required to prepare a written statement about the rights of involuntary patients. This must be displayed prominently in the health service and must include information on:

- the rights of patients and allied persons
- the right to make a complaint and details of how to make a complaint.

A copy of the statement of rights must be given to the person on admission to the health service. The statement of rights must also be explained to the person in the language, and in the way, that is clearly understood.

How is involuntary treatment reviewed?

Involuntary treatment is reviewed by:

- an authorised psychiatrist who must carry out regular assessments as set out in the treatment plan
- the Mental Health Review Tribunal, which carries out independent reviews of all involuntary patients. These occur at set intervals or on application.

The number of reviews for involuntary patients is doubled under the new Act.

Set times for independent reviews are:

- within 6 weeks of the ITO being made
- at least once every 6 months for all involuntary patients.

The MHRT is an independent body set up to review involuntary patients. It has the power to revoke authority for involuntary treatment and to make other decisions about where treatment is provided. Appeals against MHRT decisions can be lodged with the Mental Health Court.

Information about decisions

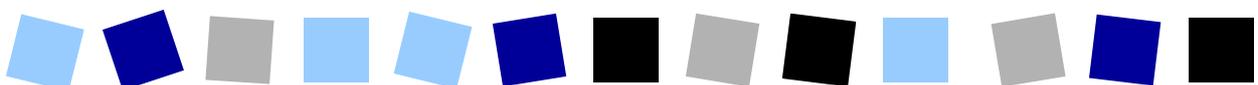
The Act provides the patient access to information about decisions affecting them and the reasons for them. This is only limited where the Mental Health Review Tribunal or the Mental Health Court makes a confidentiality order that prohibits or restricts the disclosure of information to the patient.

Access to health practitioners and legal advisors

An involuntary patient can receive visits from their own health practitioner or legal advisor at any reasonable time.

Community Visitor Program

All patients have the right to raise any concerns with a community visitor. The Office of the Adult Guardian administers this program for adults under the Guardianship and Administration Act 2000. The Office of the Children's Commissioner administers the program for children and young people under the Commission for Children and Young People Act 2000.



Mental Health Review Tribunal

The Mental Health Review Tribunal (MHRT) is the most important feature of the *Mental Health Act 2000* ensuring the protection of the rights of involuntary patients. Chapter 6 sets out the matters that the MHRT reviews, and its powers on a review. Chapter 12 establishes the MHRT, provides for its administration and outlines procedural requirements.

What is the MHRT?

The MHRT is an independent body principally established to review patients receiving involuntary treatment under the Mental Health Act. It is a single statewide body headed by a full-time President. Members will be appointed throughout Queensland to enable panels to be convened to conduct hearings.

Panels will typically consist of 3 members:

- a lawyer
- a psychiatrist (or another doctor if a psychiatrist is unavailable), and
- another person with relevant experience or qualifications, eg a community member.

The President can direct a panel of up to 5 members be convened to hear cases of a contentious or complex nature. In special cases, one-member panels may also be convened, eg. to hear urgent cases.

What does the MHRT review?

The MHRT reviews:

- whether or not the treatment criteria apply to patients under involuntary treatment orders
- the detention of young patients in high security units
- the mental condition of forensic patients
- forensic patients' fitness for trial.

The MHRT also decides:

- applications for notification orders
- treatment applications
- applications for approval for patients to move out of Queensland
- appeals against a decision of the administrator of an authorised mental health service to refuse to allow persons to visit an involuntary patient.

What are the MHRT's main powers on a review?

On a review, the MHRT can revoke an order authorising a person's involuntary treatment, order the person's transfer or make an order about whether the person can receive treatment in the community or as an in-patient.

When are reviews conducted?

For a patient under an involuntary treatment order MHRT reviews are conducted within 6 weeks of the order being made, and then within every 6 months.

For a forensic patient, reviews are conducted every 6 months from the date the order is made (see *Forensic Provisions*).

All patients (or someone on their behalf) can apply for a review at any time. However, the MHRT may dismiss the application if it is satisfied it is frivolous or vexatious.

Hearing procedures

The MHRT is required to observe the principles of natural justice and to conduct hearings in an informal manner. The tribunal is not bound by the rules of evidence so that it can more fully investigate the issues. Hearings are not open to the public unless the MHRT directs otherwise. The MHRT can appoint an assistant at a hearing with appropriate knowledge or experience (eg in cultural matters).

What are treatment applications?

Particular types of treatment are regulated under the Mental Health Act, including electroconvulsive therapy (ECT). A person must give informed consent as set out in the Act for these forms of treatment. However, a person who has not given informed consent can only be given ECT with the approval of the MHRT, on an application made to it by a psychiatrist. In an emergency, ECT can be given for up to 5 days without MRHT approval, if certified by a psychiatrist and the medical superintendent of the patient's treating health service. In this case an application must be made to the MHRT at the same time.

Examination orders

The MHRT may order a person who is the subject of the hearing to submit to an examination by a stated psychiatrist, doctor or other health practitioner. The examining practitioner is required to provide a written report on the examination to the tribunal.

Confidentiality orders

The MHRT may prohibit or restrict the disclosure of information concerning a subject of a hearing. However, the MHRT may make a confidentiality order only if it is satisfied that disclosure would:

- cause serious harm to the health of the person or patient.
- put the safety of someone at risk.

If the Tribunal makes a confidentiality order, it must:

- disclose the information or matters to the lawyer or agent of the person or patient
- give written reasons for the order to the lawyer or agent.

If the person is not represented by a lawyer or agent, the Tribunal must ensure a lawyer or agent is appointed.

Notification orders

The MHRT may order that a person with sufficient personal interest (eg a patient's family member or a victim of crime) is notified of hearings and decisions made about a forensic patient.



Provisions assisting victims of crime

The *Mental Health Act 2000* has been drafted to meet international and national standards, while meeting the community's concerns about justice and safety. It also contains a number of provisions designed to meet the needs of victims of crime. These were developed following extensive community consultation.

How are the rights of victims of crime improved?

The Mental Health Act makes important improvements to the quality and accountability of decision-making in relation to criminal charges and ongoing care where the offender has a mental illness.

The legislation ensures that victims of crime have an opportunity to put their views forward and to have these considered. The Act also provides powers to ensure community safety.

Improved decision-making

The Mental Health Court is established to decide criminal responsibility and fitness for trial (see *Forensic provisions*).

Its jurisdiction and procedures more closely align it with the broader court system. Improvements include:

- Inquisitorial powers that enable the Judge to investigate the issues fully, and to accept material that may otherwise be inadmissible in other court proceedings
- Hearings are generally open to the public
- A requirement that the matter must be returned to a criminal court if the facts of a case are disputed (and the person is fit for trial).

The Mental Health Review Tribunal is established to determine the continued detention of a patient (see *Mental Health Review Tribunal*). The new Act has been drafted to ensure its membership and operation will more properly reflect community expectations.

Improvements include:

- Establishing a single tribunal with consistent practices
- Increasing the capacity for community membership on the panels
- Enabling the panel size for reviews to be increased to up to five members in cases that represent greater concern.

How can victims put their views forward?

A victim of crime can provide information to the Mental Health Court that is relevant to its decision, if it is not already before the Court. This could include information about the mental condition of the alleged offender when the offence was committed or the risk the victim believes the alleged offender represents to the victim or the victim's family.

To improve accountability, reasons for allowing or not allowing this material to be put before the Mental Health Court must be provided to the victim.

A victim is also able to submit material to the Mental Health Review Tribunal for consideration in cases where the information is relevant to the decision. Information could be submitted when the Tribunal is deciding whether to release the patient, or the conditions to be placed on the patient if released.

How is community safety ensured?

Only the Mental Health Court or the Mental Health Review Tribunal can approve limited community treatment (a scheme of monitored involuntary treatment in the community) or order the discharge of a forensic patient.

The strict test requires that the patient cannot be released unless the patient does not represent an unacceptable risk to his or her safety, or the safety of any member of the public.

The Mental Health Court and the Tribunal are also obliged to consider whether to require, as a condition of any approval for limited community treatment, that a patient must not have contact with a victim or another specific person. If any condition is breached, limited community treatment can be revoked to ensure the person is immediately returned to the mental health facility. Police have powers to act in these circumstances, and have powers to search and enter premises.

Non-contact orders

The Mental Health Review Tribunal is empowered to make a non-contact order for a forensic patient, originally charged with serious personal offence, on discharging the patient from involuntary treatment. The Mental Health Court has similar powers in cases where it decides not to make a forensic order after finding a person of unsound mind or permanently unfit for trial.

If a person intentionally breaches a non-contact order, a Magistrates Court can impose a penalty or vary the order.

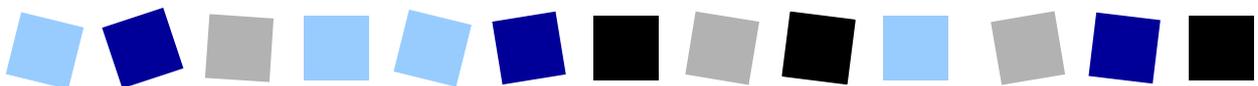
Notification orders

The Mental Health Review Tribunal may order that a person with sufficient personal interest (eg a patient's family member or a victim of crime) is notified of hearing dates and decisions made about a forensic patient. These include decisions to discharge the patient, to authorise limited community treatment, to order the transfer of the patient to another Mental Health Service, or for approval to move out of Queensland.

To ensure accountability, reasons for making or not making a notification order must be provided to the applicant for a notification order.

Other provisions assisting victims

The provisions of the *Criminal Offence Victims Act 1995* also apply to matters before the Mental Health Court. For example, criminal justice agencies are required to provide information to victims about their rights, the decision-making process and to be advised of Court hearing dates. A victim of crime also has access to *ex gratia* payments for damages where a mentally ill offender is found of unsound mind or permanently unfit for trial.



Glossary of terms

Administrator	A person declared by the Director of Mental Health to be the administrative single point of accountability in each AMHS.
Assessment documents	For involuntary assessment (chapter 2)— <ul style="list-style-type: none">• request for assessment• recommendation for assessment For classified patients (chapter 3)— <ul style="list-style-type: none">• recommendation for assessment• agreement for assessment• court assessment order <i>or</i> custodian's assessment authority
Authorised mental health practitioner	An experienced mental health professional appointed by the Director of Mental Health, if in the Director's opinion, the practitioner has the necessary expertise and experience.
Authorised mental health service	A service that is declared by the Director of Mental Health. An AMHS may be comprised of both community based and in-patient mental health facilities. An AMHS is the only place where force can be used to give involuntary treatment.
Authorised doctor	A doctor appointed by the administrator of an authorised mental health service, if the doctor has the necessary experience or expertise in mental health.
Authorised psychiatrist	An authorised doctor who is a psychiatrist.
Classified patient	A person admitted to an authorised mental health service from court or custody.
Director of Mental Health	The statutory officer appointed by the Governor-in-Council, responsible on a statewide basis for ensuring that the assessment and treatment of involuntary patients complies with the <i>MHA 2000</i> .
Doctor	Any medical practitioner.
Emergency examination order	An order made by a police officer, ambulance officer or psychiatrist in urgent circumstances to authorise the taking and detention of a person at an authorised mental health service for examination.

Forensic order	Made by Mental Health Court or after jury trial if it is found that the person was of unsound mind when the alleged offence was committed, or is unfit for trial. Forensic orders may also be made by the Minister for Health for a person detained in correctional custody following a jury finding of unsound mind or unfit for trial.
Health practitioner	Defined as— <ul style="list-style-type: none"> • a registered doctor, nurse, occupational therapist, psychologist • a social worker engaged in providing health services • another person with the necessary training, qualifications and expertise appointed by the administrator of an authorised mental health service.
Involuntary treatment order	An order authorising a patient's involuntary treatment at an authorised mental health service – can be either in-patient or community category.
Justices examination order	An order made by a magistrate or justice of the peace to authorise a doctor or authorised mental health practitioner to examine a person to decide whether assessment documents should be made.
Limited community treatment	Treatment or rehabilitation in the community that can be undertaken by a patient under the in-patient category of an involuntary treatment order.
Mental Health Court	A body constituted by a Supreme Court judge responsible for deciding criminal responsibility, fitness for trial and detention of mentally ill offenders.
Mental Health Review Tribunal (MHRT)	The independent body responsible for conducting regular reviews of involuntary patients.
Treatment plan	Outlines an involuntary patient's proposed treatment.