

# Dummies guide to the mental health legal system (NSW)

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A legal framework for mental health in New South Wales, Australia is legislated in the [Mental Health Act \(1990\)](#).

A patient can be admitted either as a **Voluntary** or **Involuntary** patient. If they choose to be admitted as a voluntary patient, then they are choosing to be in hospital of their own free will. Essentially, no further paperwork. Just like any other admission into hospital.

The problem occurs if you feel that a patient has to be detained for their own safety, however they do not wish to be admitted. In most circumstances, the patient has the right to choose, **provided they have the capacity to make an informed decision**.



*The Mental Health Act can be a headache*

Remember that the law is in place to protect the patient's rights, and we have to respect that. This all stems back to the bad old days of the institutionalised mental health system in which there were very few guidelines preventing patients from being incorrectly detained and/or treated.

***The Mental Health Act(1990) in NSW is fundametally designed to protect the patient's rights***

The current mental health act aims at the least restrictive form of care where possible.

It **does** allow for the fact that there are some conditions where the patient:

- Is not in a frame of mind to make an informed decision;
- **and** this may put them in at risk situations.

For this reason, the current mental health act allows us to detain patients that we feel fall into those two categories for assessment and/or treatment.

The "and" in the above two points is vital. If somebody is under the influence of intoxicants or acutely psychotic, but poses no risk to self, reputation, finances or others, we are not permitted to involuntarily detain them.

By the same token, even if a patient is stating that they wish to kill themselves, however there are no evident factors preventing them from making an informed decision regarding this, we are not permitted under the Mental Health Act to detain them. This is not a common scenario. Forensics is not discussed in this topic.

## Detention and involuntary treatment of a patient can only be justified under the Mental Health Act when:

1. The patient has symptoms or signs suggestive of a mental illness requiring treatment;
2. **and**, they pose a risk of serious "harm" to themselves or to others.

At all times, this is under the auspices that the least restrictive environment that is appropriate is used.

### Legal paperwork for involuntary admission

There are two basic processes required

1. Transport
2. Assessment.

**Transport:** [Schedule 2](#), aka Section 21 and 22, aka "Schedule"

Basically this is a document that allows you to transport a patient from where ever they are, to a gazetted unit for assessment. It is not an admission document.

Even after a patient is admitted to one gazetted unit, if they require transfer to another gazetted unit while not under the Mental Health Act (for example, a *voluntary patient*), then another transport document is required.

**Assessment:** [Form 1](#) and [Form 2](#)

If assessment for involuntary admission is to occur, then a statement of rights must be given to the patients, informing them of why they are being assessed. This is called a **Form 1**.

Assessment for involuntary admission must be performed by **two doctors**, the first assessment occurring within 12 hrs. One of the assessments must be completed by a psychiatrist. Both assessing doctors must complete a **Form 2**, which summarises:

1. Is the patient mentally disordered?
2. Is the patient mentally ill?
3. If so, do they pose a risk of significant harm to themselves (self, financial, reputation) or to others.

If they pose a risk to self or others and are **mentally disordered**, then the patient can be detained for a maximum of 3 days prior to further review. This is often useful for the intoxicated patient, allowing for a significant period of time for the intoxication to resolve.

If they pose a risk to self or others and are **mentally ill**, then the patient can be detained prior to seeing a magistrate at the earliest practical time.

### Involuntary admission paper trail:

1. Fill out **Schedule 2**: allows the patient to be transported (involuntarily) to a gazetted unit (usually a psychiatric hospital or some hospital emergency departments) for assessment;
2. Give **Form 1** to the patient (which lists their rights under the Mental Health Act)
3. Assessment of the patient and fill out **Form 2** within 12 hours.
4. Assessment of the patient by a second doctor and fill out another **Form 2** before appearing before the magistrate. One of the Form 2 documents must be completed by a psychiatrist.

## Magistrate

By this time, the patient has been seen by two doctors, one a psychiatrist who deem that the patient is mentally ill, and also poses a risk to themselves or to others.

The role of the magistrate is arbitrate between the patient (with legal representation) and the treating medical team. He must determine whether the patient's rights were upheld in this process – such that appropriate transport documentation (Schedule 2), assessment documentation (Form 1 and Form 2) were completed, and that the patient has appropriate representation, including allowing friends and family if requested to be present.

It is the magistrate's eventual decision whether the patient is deemed a mentally ill person or not, and whether this poses a risk to themselves or to others.

**For the purposes of the Mental Health Act, it is the Magistrate who decides whether or not someone is a "mentally ill person".**

If the patient is deemed:

1. Not a mentally ill person and/or not at risk to themselves or others:
  - o then they **cannot be detained** under the Mental Health Act;
  - o they have to be either discharged or choose to be voluntarily admitted to hospital.
2. If deemed a mentally ill person and at risk to self or others:
  - o then a plan must be arranged to institute treatment;
  - o this can be via as an involuntary patient under a **temporary patient order**;
  - o or in the community under a **community treatment order** or community counselling order.
  - o a decision at this time of whether a protected estates order is appropriate can be made.

Sometimes it may be difficult to make a decision of whether a patient is a mentally ill person (*for the purposes of the Mental Health Act*) and the magistrate may decide to adjourn (delay) the decision until further review. The patient can continue to be detained until further (Magistrate) review up to a maximum of 2 weeks.

Once a decision of whether the patient is a mentally ill person has been decided by the magistrate, any further decisions regarding the Mental Health Act have to be decided by a more specialised board known as the **Mental Health Review Tribunal**.

## **The Mental Health Review Tribunal in a box**

- It is an independent body established by the NSW Mental Health Act 1990;
- upholds the civil and legal rights of people with mental illness;
- ensures that they receive the best possible care in the least restrictive environment.

The Tribunal reviews case management plans proposed by psychiatric case managers and hospital staff. It does not prescribe drugs or treatments.

Each panel is chaired by a lawyer and must have one psychiatrist and one other suitably qualified person sitting on it. All Tribunal members have extensive experience in mental health.

### **Temporary Patient Order**

Once a patient is deemed a mentally ill person (*for the purposes of the Mental Health Act*) then they can be involuntarily detained under the Act for up to 3 months. If additional treating time required then an extension of temporary patient order can be requested from the Mental Health Review Tribunal.

### **Community Orders**

Once a patient is deemed a mentally ill person (*for the purposes of the Mental Health Act*) then they can be discharged to the community under the proviso that they abide by a community treatment order (CTO) or community Counselling Order (CCO).

### **Community Treatment Order:**

The patient can be released in the community but must receive designated treatment as set out in the terms of the CTO by the agreed community healthy centre staff (often a case manager from a mental health team, or if unavailable a local medical officer). Treatment is usually in the form of observing tablets being taken, or a long acting depot antipsychotic (usually IMI injection given every 1-3 weeks).

If the patient refuses to abide by the terms of the CTO he or she must be given verbal warning. If they continue to abide by the terms of the CTO, then written warning is given and if this is again ignored then the patient can be detained involuntarily in hospital under the terms of the CTO. They do not have to be psychotic. No further scheduling or Form 2 is required.

If the patient requires a schedule while on a CTO, then the CTO becomes invalid. Do not be afraid of scheduling a patient if required because of this. If a patient is unmanageable that a schedule is required then it probably suggests that the CTO needs to be reviewed.

### Community Counselling Order:

Very similar to a CTO, except that rather than the patient having to accept treatment in the form of medication, they must agree to see the designated counsellor at set times.

### Protective Estates Order:

Once a patient is deemed a mentally ill person (*for the purposes of the Mental Health Act*), then a protective estates order can be requested either by a magistrate or by the tribunal.

This occurs when it is felt that by virtue of the patient's mental illness they are no longer able to manage their own finances and pose a risk to themselves by continuing to do so.

It determines that the patient's money is to be managed by the Protective Estates Office. This can occur to varying degrees. For example, for some patients the Protective Estates Office pays the rent, however all other money is managed by the patient. In other situations, the entirety of the patient's finances are controlled by the Protective Estates Office.

### **Definitions**

You will have to become au fait with the legal language. The confusion arises between "a person with mental illness" (which is a medical and clinical decision) and "mentally ill (or disordered) person" which is a legal term. This is often exacerbated by the fact many people simply shorten the term "mentally ill person" to "mentally ill".

The NSW legislation is quite prescriptive about what "mental illness" means for the purposes of the Act. If you mean it in the legal sense, then you should use the proper terminology.

### ***Mental Health Act 1990***

#### **Mentally ill persons**

1. A person is a mentally ill person if the person is suffering from mental illness and, owing to that illness, there are reasonable grounds for believing that care, treatment or control of the person is necessary:
  - o (a) for the person's own protection from serious harm,
  - o (b) for the protection of others from serious harm.
2. In considering whether a person is a mentally ill person, the continuing condition of the person, including any likely deterioration in the person's condition and the likely effect of any such deterioration, are to be taken into account.

#### **Mentally disordered persons**

1. A person (whether or not the person is suffering from a mental illness) is a mentally disordered person if the person's behaviour for the time being is so irrational as to justify a conclusion on reasonable grounds that temporary care, treatment or control of the person is necessary:
  - o (a) for the person's own protection from serious harm, or

- o (b) for the protection of others from serious harm.