

# Chapter Four

## Involuntary hospital admission

### *The principal focus in mental health legislation*

**W**hile a preference for voluntary admission is stated in the Act, it is acknowledged that in some circumstances involuntary admission will be necessary. The circumstances where a person can be involuntarily admitted is the principal focus for legislation in mental health, both on a national and international level. This is because the infringement on the person's civil rights is substantial, and would otherwise be illegal.

The major change in the new legislation is that involuntary hospitalisation orders are simplified to two orders: an initial order and a continuing care order. There are also changes to the procedures that must be followed in putting a person on an order. This chapter will discuss the two orders and provides an overview of the procedures that must be followed for involuntary admission. A [process flowchart](#) is included at the end of the chapter.

Before a person can be placed on an involuntary order, an application must be made by the person responsible or an authorised officer. For more detailed information on the person responsible, see [Chapter 1](#). The powers of authorised officers in relation to taking people into protective custody, were discussed in [Chapter 3](#).

### Placing a person on an order for hospital admission

There are three ways in which a person can be taken to an approved hospital and admitted:

- the person may be taken into protective custody and placed on an initial order following examination by a medical practitioner at an assessment centre (sections 15 and 16); or
- the person may be placed on an initial order by a medical practitioner in the community; or
- the person may be on a community treatment order and be placed on a continuing care order.

These pathways will be discussed in turn.

#### ***Power to take a person into protective custody ([sections 15 and 16](#))***

This power allows an authorised officer or a police officer to take a person into protective custody if it is considered on reasonable grounds that the person has a mental illness and in consequence there is a serious risk of harm to that person or others. The risk of harm may be that the person's mental or physical health will deteriorate.

A person who is taken into protective custody must be taken to an approved hospital or an assessment centre as soon as possible. When a person is taken into protective custody, the authorised officer or police officer must contact the nearest assessment centre to advise that they will be bringing someone in to be assessed at the assessment centre. This notification should occur as soon as possible, but not later than two hours after the person has been taken into protective custody.

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On being taken to an assessment centre, the person can be held for up to four hours for the purpose of examination and treatment by a medical practitioner. If the person has not been placed on an order within four hours of being taken to the assessment centre, they must be released.

### **ACTION CHECKLIST**

- ? the authorised officer or police officer believes the person has a mental illness.
- ⛔ as a result of the mental illness, there is a serious risk of harm to the person or others.
- ☎ on taking the person into protective custody, the assessment centre must be notified within two hours.
- 🕒 on being taken to the assessment centre, the person is assessed by a medical practitioner within four hours.

While the Act itself is silent on how the person should be transported to hospital, the difficulties that have been faced in the past with transporting a person, particularly from rural and remote areas has indicated some guidelines are required. These guidelines have been endorsed by the Mental Health Act Implementation Advisory Committee.

See also the *Mental Health Working Protocol Between Tasmania Police and the Department of Community and Health Services* dated February 1988. (See Policies)

### ***Safe transport guidelines***

In determining the appropriate arrangements to transport an individual for psychiatric assessment or treatment the following guidelines are recommended:

- the accepting psychiatrist should participate in determining appropriate assessment, mode of transport and escort requirements with the referring agency, particularly if transport is required from a remote region;
- if possible, a medical examination should be conducted prior to transport to ascertain any physical issues such as overdose, intoxication or medical illness;
- ambulance transport should be used if any of the above apply, and/or if psychotropic medication has been administered;
- in the event of intoxication, delaying transport if practicable to achieve sobriety with appropriate services/resources would enhance safe transport;
- in the event of potential violence, police assistance may be required to support ambulance transport;
- If ambulance transport is not indicated then an appropriate number of accompanying personnel with training in safe restraint should be utilised to achieve safe transport. The specific requirements should be jointly determined between the accepting psychiatrist and the referring agency;
- Where transport is occurring from a remote area appropriate communication assistance should be available eg mobile phones.

***The person is placed on an initial order by a medical practitioner in the community***  
***– [section 26\(3\)](#)***

An initial order may be made when there has been an application by the person responsible or an authorised officer and an assessment by a medical practitioner, who is satisfied that the criteria for involuntary hospital admission are met.

Once an initial order is made, the applicant for the order can take the person into protective custody, or authorise someone else to take the person into protective custody and transport them to the approved hospital referred to in the order. This means that the least intrusive method of taking the person to an approved hospital can be used. If, for example, the person is willing to go with a relative who is not the person responsible, the applicant for the order can ask this relative to take the patient to hospital. If additional assistance is required, the applicant for the order can ask a police officer to take the person to hospital.

***A person who is currently on a community treatment order is placed on a continuing care order – [section 28\(5\)](#)***

A person who is on a community treatment order may be placed directly onto a continuing care order if this is required. To be placed on a continuing care order there must be an application by the person responsible or an authorised officer and assessment by two medical practitioners, at least one of whom must be an approved medical practitioner. If the person is not in an approved hospital when the order is made, an authorised officer may take custody of the person and transport them to the approved hospital.

***Involuntary admission to an approved hospital***  
***([sections 24 – 30](#))***

Involuntary admission to an approved hospital can be made on an initial order, or a continuing care order. An initial order runs for up to 72 hours. A continuing care order, which runs for up to six months, can be made while an initial order is in force or while the person is on a community treatment order.

An order for involuntary hospitalisation gives the authority to detain a person at the approved hospital.

***Initial orders ([sections 24 – 27](#))***

An authorised officer or the person responsible can apply to a medical practitioner to have the person's mental state assessed. If, in the opinion of the medical practitioner, the criteria for involuntary admission are met, an initial order may be made, under which the person can be transported to, and detained in, an approved hospital. If the person is not taken to an approved hospital within 72 hours of the making of the order, the order lapses.

An initial order does not allow the patient to be kept at an approved hospital for more than 24 hours from the time of admission, unless the person has been assessed by an approved medical practitioner that period. If this does not occur, the person may become a voluntary patient. An approved medical practitioner may confirm or discharge the initial order after that assessment.

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If the approved medical practitioner confirms the order, the person can be kept in the approved hospital for up to 72 hours from the time of admission. The medical practitioner who is in charge of the care and treatment of the patient may discharge the order at any time.

If the order is discharged at any stage or lapses because necessary steps have not been taken at appropriate times, the person is free to leave or may become a voluntary patient with the agreement of the person and hospital staff. (See the process flowchart at the end of the chapter).

### ***The steps to an initial order – see [Form 1](#)***

To make an initial order the following five steps must be followed in order:

#### **STEP ONE**

 Application for involuntary admission completed by the person responsible or an authorised officer

**An application for involuntary hospital admission must be completed by the person responsible or an authorised officer.**

Unlike the 1963 Act, there is no requirement to seek an application by the person responsible before an authorised officer can apply. It is, however, preferable that the person who knows that patient the best makes the application. If this may cause some difficulties in the relationship between the patient and their primary support person or carer, the authorised officer can be used in preference to the person responsible.

#### **STEP TWO**

 Assessment by a medical practitioner

**Assessment by a medical practitioner.**

The person may be examined by a medical practitioner. A person cannot be placed on an order unless the medical practitioner is satisfied that:

- the person has a mental illness; and
- there is, in consequence, a serious risk of harm to the person or others. The risk of harm may be a serious deterioration in the person's physical or mental health; and
- the detention of the person as an involuntary patient is necessary to protect the person or others; and
- the approved hospital is adequately equipped and staffed for the care or treatment of the person.

An initial order is made once the medical practitioner has signed the form (section C). The effect of the initial order is that the person can be kept in the hospital for up to 72 hours from the time of the order being made (so long as the order is confirmed by an approved medical practitioner within the first 24 hours).

#### **STEP THREE**

 Statement of legal rights given to patient and person responsible

**The person and their person responsible (if there is one) must be given a statement of legal rights when the order is made (see [Chapter 11](#)).**

The person's rights must be explained in a way that makes them understandable. This means that if, for example, an interpreter is required then the person is given access to an interpreter. More information on interpreter services is available in Chapter 11.

#### STEP FOUR



Assessment  
by approved  
medical  
practitioner  
within 24 hours

**The person must be assessed by an approved medical practitioner within 24 hours of admission to the approved hospital.**

If the person has not been examined by an approved medical practitioner within 24 hours of admission to the approved hospital, the initial order lapses and the person is free to leave. If accepted, the person may become a voluntary patient. The 24 hours commences from the time the person is admitted to hospital.

The approved medical practitioner who examines the patient must confirm or discharge the order (section E). If the order is confirmed, the person can be kept at the hospital for a total of 72 hours from the time of admission.

#### STEP FIVE



Person  
and person  
responsible given  
a statement of the  
person's diagnosis,  
treatment and  
rights

**The person and person responsible must also be given a statement of the person's diagnosis, treatment plan and right to have the order reviewed by the Mental Health Tribunal.**

The statement of treatment and diagnosis can only be given to the person once this has been determined. This statement must also be explained in a way that is understandable to the person, if this is possible. It should be as comprehensive as possible so that the person, and the person responsible have sufficient information to be able to understand the diagnosis, the general nature and effect of the proposed treatment, the possible side effects, and any alternatives which may be available (see also [Chapter 11](#)).

Information can be withheld from this statement if the medical practitioner in charge of the person's treatment thinks that the information will have a negative effect on their treatment. If information is withheld, the Mental Health Tribunal must be notified within 48 hours (see Form 9).

#### *When an initial order ends*

If any of the following occur, the initial order comes to an end. This means the patient becomes a voluntary patient and has the right to discharge him/herself from the hospital.

An initial order will end if:

- the person has not been taken to an approved hospital within 72 hours after the order was made;
- the person has not been examined by an approved medical practitioner within 24 hours of admission;
- an approved medical practitioner discharges the order after performing their examination and assessment;
- the medical practitioner in charge of the care and treatment of the patient discharges the order;
- a continuing care order or community treatment order is not made within 72 hours after the time of admission;
- a continuing care order or community treatment order is made in respect of the person.

If the person is discharged, this must be noted on the weekly register (Form 10), which is signed by the senior approved medical practitioner and sent to the Mental Health Tribunal each week.

## Continuing care orders

A continuing care order can be made while the person is on an initial order or on a community treatment order. It allows for the involuntary hospitalisation of the person for a period of up to six months. For a continuing care order to be made, the person must be assessed by a medical practitioner (who cannot be the medical practitioner who signed the initial order) and an approved medical practitioner, or two approved medical practitioners.

The Mental Health Tribunal must be notified within 48 hours of the order being made, and must review the order within 28 days. A continuing care order can be renewed at the end of the period for which it was made by two approved medical practitioners (see the process flow chart at the end of this chapter). The renewal is also subject to review by the Mental Health Tribunal.

### *The steps to a continuing care order – Form 2*

To make a continuing care order the following steps must be followed in order:

#### **STEP ONE**

The person must be on an initial order or a CTO

#### **The person must be on an initial order or a community treatment order.**

A person cannot be placed directly onto a continuing care order. They must already be on an initial order (see above) or a community treatment order. The process for being placed on a community treatment order (CTO) is discussed in [Chapter 7](#).

If a person on a CTO is hospitalised for more than three months, the CTO lapses and another CTO may be needed when the person is discharged from hospital. A person on a CTO can be hospitalised as a voluntary patient or on an initial or continuing care order.

#### **STEP TWO**

 The application form must be completed

#### **An application for involuntary hospital admission must be completed by the person responsible or an authorised officer.**

There must be an application by the person responsible or an authorised officer.

#### **STEP THREE**

Assessment by two medical practitioners

#### **There must be assessments by two medical practitioners.**

At least one of the medical assessments must be by an approved medical practitioner. The medical practitioner who makes a continuing care order must be a different practitioner from the one who made the initial order.

The medical practitioners must both be satisfied that:

- the person has a mental illness; and
- there is, in consequence a serious risk of harm to the person or others. The risk of harm may be a serious deterioration in the person's physical or mental health; and
- the detention of the person as an involuntary patient is necessary to protect the person or others; and

- the approved hospital to which it is proposed to admit the person is adequately equipped and staffed to provide the necessary care or treatment of the person.

The period of time of the order must be stated in the order. Once both practitioners have signed the order, a continuing care order exists.

#### STEP FOUR



Statement of legal rights given to patient and person responsible

**The person and their person responsible (if there is one) must be given a statement of legal rights (see [Chapter 11](#)).**

The person's rights must be explained in a way that makes them understandable if possible. This means that if, for example, an interpreter is required that the person be given access to an interpreter. For more information on interpreter services see [Chapter 11](#).

#### STEP FIVE



Person and person responsible must be given a statement of the person's diagnosis, treatment plan and rights

**The person and the person responsible must also be given a statement of their diagnosis, treatment plan and right to have the order reviewed by the Mental Health Tribunal.**

The statement of treatment and diagnosis must be given to the person once this has been determined. This statement must also be explained in a way that is, as far as possible, understandable to the person, and this may require the use of an interpreter (see [Chapter 11](#)).

Information can be withheld from this statement if the medical practitioner in charge of the person's treatment thinks that the information will have a negative effect on the person's treatment.

If information is withheld, the Mental Health Tribunal must be notified of this within 48 hours (Form 9).

#### STEP SIX



Notify the Tribunal within 48 hours

**The Mental Health Tribunal must be notified within 48 hours of the person being placed on the order (Form 9).**

Form 9 may be completed and faxed to the Mental Health Tribunal on (03) 6233 4509. The Mental Health Tribunal will review the order within 28 days of the order being made (for more information, see [Chapter 8](#)).

#### STEP SEVEN



Renewal of a continuing care order – the process repeats

**Renewal of a continuing care order.**

It goes almost without saying that a continuing care order can only be renewed if the person still meets the criteria for involuntary detention in hospital (section 24 – see Chapter 1 above). If a person still requires treatment but does not necessarily require hospitalisation, a community treatment order should also be considered.

To renew a continuing care order the continuing care order renewal form (Form 3) must be completed.

The process is similar to placing a person on a continuing care order:

- there must be an application by an authorised officer or person responsible;
- there must be assessments by TWO approved medical practitioners. This is the essential difference to making the original continuing care order, where only one of the medical assessment has to be completed by an approved medical practitioner;
- the medical assessments must be carried out BEFORE the continuing care order expires. Each assessment must be carried out in the month before the order is due to expire.

### ***When a continuing care order ends***

A continuing care order ends if:

- the senior approved medical practitioner discharges the order; or
- the Tribunal discharges the order; or
- a community treatment order is made; or
- the order expires without renewal.

### ***Errors in orders***

An error in an order (for example, an incorrect address or date) can be amended by the medical practitioner who made the order if:

- it is amended within 14 days of the order being made; and
- the consent of the controlling authority of the hospital is obtained; and
- the error does not relate to whether there were sufficient grounds for the order to be made (ie whether the person had a mental illness, there was a risk to the person or others etc).

If there is an error in the order, the order is still valid (ie the person can still be transported to and kept at the hospital) unless it relates to the grounds on which it was made. This means that if there was no belief the person had a mental illness, or there was no risk of harm to the person or others, the order would not be valid.

Key  
points

## Involuntary hospital admission *continued*

### To transport a person to hospital

- The three ways a person may be taken to a hospital against their will are:
  - (a) Taking the person into protective custody. For this:
    - (i) the authorised officer or police officer must believe the person has a mental illness and there is a risk of harm to themselves or others;
    - (ii) the assessment centre must be notified that the person has been taken into protective custody within 2 hours;
    - (iii) the person must be taken to an approved hospital or other assessment centre as soon as possible;
    - (iv) the person must be assessed by a medical practitioner within 4 hours of being taken to an approved hospital or assessment centre.
  - (b) Placing the person on an initial order in the community.
    - (i) NB the order lapses if the person is not taken to hospital within 72 hours.
  - (c) Placing the a person who is currently on a community treatment order on a continuing care order in the community.

### Initial orders

- To make an initial order:
  - (a) An application must be made by the person responsible or an authorised officer.
  - (b) An assessment must be made by a medical practitioner.
  - (c) The person and their person responsible must be given a statement of legal rights and have this explained.
- To continue an initial order from 24 to 72 hours the person must be assessed by an approved medical practitioner who confirms the need for the order;
- The person must be given a statement of their condition, treatment and right to have the order reviewed.

### Continuing care orders

- To make a continuing care order:
  - (a) the person must be on an initial order or a community treatment order;
  - (b) an application must be made by the person responsible or an authorised officer;
  - (c) there must be two medical assessments and at least one of these must be by an approved medical practitioner.
- After making the order:
  - (a) the person and their person responsible must be given a statement of their legal rights and have this explained;
  - (b) the person (and their person responsible) must be given a statement of the person's diagnosis, treatment plan and right to have the order reviewed;
  - (c) the Mental Health Tribunal must be notified within 48 hours of the order being made.
- A continuing care order can be renewed by two approved medical practitioners.

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### **Errors in orders**

- Errors in orders can be amended by the medical practitioner who made the order if it is amended within 14 days, with the consent of the controlling authority of the approved hospital, and if the error does not relate to the grounds on which the order was made.

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