

Chapter Eleven

Information for patients

Section 45 – Statements of rights, diagnosis, treatment and review

This chapter considers in further detail the requirements of section 45 of the Act. It also includes information on accessing interpreting and translating services and draft versions of the following information statements which (when finalised) will be given to patients:

- involuntary hospital admission;
- community treatment orders;
- statement of legal rights;
- information on diagnosis, treatment and review.

Information statements given to patients must be in a form approved by the Secretary. The statements listed above had not been approved at the time of publication and so have been included for training purposes only.

Section 45

Section 45 of the Act requires that where any order is made under the Act (ie an initial order, continuing care order or community treatment order), the person, and their person responsible, must each be given an information statement setting out the rights of involuntary patients under the Act, and any further information, including advocacy services and grievances procedures, required under the regulations. (There were no requirements in the regulations at the time of publication).

Section 45 also requires that further information be given to the patient and their person responsible about the patient's condition, the nature of the proposed treatment and the patient's right to have the order reviewed:

- as soon as possible after a diagnosis of the patient's condition has been made, and a plan for treatment has been decided; and
- when an order is renewed.

The section is aimed at promoting release of information – and that is why the Tribunal must be informed if information is withheld from a patient or person responsible under section 45(3).

What information should be provided about the patient's condition and the proposed treatment?

While Section 45 states the types of information which a person must be given, it does not state the level of detail which should be provided. This allows practitioners to take account of the particular needs of each patient when deciding what information should be provided.

Section 33 of the Act may assist practitioners to identify what information should be included. While this section specifically relates to the information which must be provided before informed consent to medical treatment can be given, it also gives a framework for practitioners to consider in the context of section 45.

Section 33 states that before being able to consent to medical treatment, a patient must be given:

- a clear explanation of the proposed treatment; and
- a description, without concealment or distortion, of the benefits and disadvantages of the treatment, including a statement of the risk of adverse consequences; and
- a description of alternative forms of treatment that may be available and their benefits and disadvantages.

Patients also need to be given clear answers to their questions and to have a reasonable opportunity to obtain independent medical or other advice. Practitioners are encouraged to provide this information in the statement of diagnosis, treatment and review given to patients and their person responsible.

The information provided by practitioners will be of limited use if the patient or their person responsible can not understand it. Practitioners are encouraged to avoid the use of jargon in information statements, and to make use of translation and interpreting services where necessary. The obligation on practitioners to ensure that the patient and their person responsible can understand the information provided, is to be found in section 47 of the Act.

Do you need an interpreter?

The Tasmanian Government is committed to the rights of all Tasmanians from a different culture or language background. It is the Department of Health and Human Services' policy to provide professional interpreting services to clients free of charge in situations where communication is difficult.

TIS – Translating and Interpreting Service

The Department of Immigration and Ethnic Affairs provides a Translating and Interpreting Service (TIS) for non-English speakers and for non-English speakers needing to communicate with them. TIS is available 24 hours a day, 7 days a week and is accessible from anywhere in Australia for the cost of a local call.

The main service provided by TIS is telephone interpreting. This allows a three way conversation by telephone between two parties, assisted by an interpreter. Other services include on-site, face-to-face interpreting and a document translation service.

As a free community service, TIS provides:

- telephone interpreting to individuals wishing to speak with government or certain community organisations;
- limited face-to-face interpreting to individuals, medical practitioners, and community organisations on migrant settlement-related matters; and
- extract translations of personal documents for migrants during their first two years of residence in Australia.

On a fee-for-service basis TIS provides services to individuals, Commonwealth and State/Territory government agencies, community organisations and private sector businesses and organisations in relation to commercial transactions.

TIS services are provided by more than 2000 professional interpreters and translators in more than 100 languages and dialects.

Please contact TIS on 131 450

24 hours a day, 7 days a week

Postal address: PO Box 25, Belconnen ACT 2616, Australia

AMIGOS Cooperative

AMIGOS Cooperative is a Tasmania based service who offer expert interpreting, translating, teaching, guiding and multicultural consulting. All members of the team are qualified and observe the code of ethics of the Australian Institute of Interpreters and Translators.

AMIGOS provide professional interpreters and translators who assist in overcoming language and cultural obstacles which often lead to distress or frustration of clients and service providers.

The service covers the entire State and is provided on a fee for service basis.

Please contact AMIGOS on (03) 6228 5480

24 hours a day, 7 days a week

Postal address: 68 Risdon Road, New Town, Tasmania 7008

Interpreter card

The interpreter card is designed to help clients whose first language is not English, to deal with State Government organisations. The card is available free of charge to migrants and refugees who have difficulty in communicating in English.

The card clearly indicates that the client needs an interpreter. Clients present the card to the agency or organisations who then use it to help arrange an interpreter.

The cards are distributed through the Department of Immigration and Multicultural Affairs, the Adult Migrant English Service, Community Refugee Support Groups, Ethnic Communities' Councils and Migrant Resource Centres.

For more information please contact your Ethnic Liaison Officer or the Office of Multicultural and Ethnic Affairs on (03) 6233 3439.

Involuntary hospital admission

About your rights

This guide is to help answer questions you might have about being admitted to a hospital for treatment of a mental illness. Most importantly, it informs you of your rights under the *Mental Health Act 1996*. If at any time you have questions about your rights, ask someone to explain. This may be a member of staff, your case manager, a friend or relative, your doctor, or a person specifically designated to advocate your rights.

Any interference with your rights, dignity and self-respect must be kept to the minimum necessary to protect you or other people. In addition, your wishes should be respected unless this is not in your best interests, or there is a need to protect other people.

Why am I in hospital?

You have been admitted to a hospital so that you can receive care and/or treatment for a mental illness. A doctor has recommended it because, in the doctor's opinion:

- you appear to be mentally ill;
- because of the mental illness there is a significant risk to you or to other people. The risk to you may be that your physical or mental state will get worse;
- being in a hospital is necessary to protect you or other people;
- the hospital is properly equipped and staffed to care for you and treat your illness.

What will happen to me while I'm here?

Within 24 hours of admission to hospital, an approved medical practitioner (who is a doctor with experience in treating mental illness) will examine you to decide if the reasons for your admission still apply. If they do, you must remain in hospital as an involuntary patient for up to 72 hours. If the approved medical practitioner does not believe these reasons still apply to you, you will not be required to remain in hospital against your will. However, if both you and the doctor who is treating you in hospital think you would benefit from further treatment, you can ask to stay as a voluntary patient.

After 72 hours, you will be assessed again to see whether you should continue to be an involuntary patient. If your doctor believes the reasons for your involuntary admission still apply, you will be placed on a continuing care order.

The members of the treating team will provide you with treatment to meet your specific needs. You will be given a written and verbal explanation of your condition, the nature of the proposed treatment and be advised of your right to have the order reviewed by the Mental Health Tribunal. The treating team will regularly discuss with you your diagnosis, medication, methods of treatment, alternative treatments and available services. If you have any questions, ask a member of the team. You can ask to have someone you trust with you while you talk to them, if this will help you to ask questions.

Consent to medical treatment in hospital

If you are able to give consent to treatment:

Treatment must be given with your informed consent, or with the consent of the Guardianship and Administration Board.

Informed consent means that you are able to understand the nature and effect of the treatment, and you agree to the treatment after being given:

- an explanation of the treatment (including the advantages and disadvantages of the treatment);
- a description of alternative treatments.

You must be given an opportunity to have questions answered. You also must be given a reasonable opportunity to seek independent medical or other advice.

If your treating doctor believes a particular treatment is necessary and you refuse to undergo the treatment, the Guardianship and Administration Board may make an order authorising the giving of the medical treatment.

If you are unable to give consent

If your treating doctor believes a particular treatment is necessary, and you are not able to give informed consent due to your mental state, a family member or a close friend or relative may consent on your behalf.

If you do not have a friend or relative who can consent on your behalf, some types of treatment can be carried out by your doctor. For other types of treatment (for example Electro Convulsive Therapy), the consent of the Guardianship and Administration Board must be sought.

Non-medical treatment and care

Seclusion

Seclusion is when a person is confined to a room for a period of time. This only happens if it is necessary to protect you or other people. It is only used when other ways of ensuring safety are not appropriate. If you are placed in seclusion, you must be visited by nursing staff at least every 15 minutes and be examined by a doctor every 4 hours. You must be provided with appropriate bedding and clothing, meals at appropriate times and adequate toilet facilities.

Physical restraint

You can only be physically restrained if this is necessary to provide medical treatment, prevent injury to you or other people, or to prevent damage to property. Seclusion and restraint can only be used if they are approved by your treating doctor or an approved psychiatric nurse.

Leave of absence

When you are well enough, you may be allowed to leave the hospital for a short period of time (for example, a few hours, overnight or a weekend). If you would like to have leave, you should discuss this with a member of the treating team. Your treating doctor will make the final decision about your request for leave. If you go on leave of absence from the hospital, your doctor can place conditions on

your leave, for example, that you must stay with a family member. The terms and conditions of your leave will be given to you in writing before you leave the hospital. If you do not keep to these terms, do not return at the end of the leave, or your leave is cancelled, the hospital can ask an authorised officer or the police to return you to hospital. If your leave is cancelled you will be sent a letter asking you to return to the hospital by a certain time and explaining why it has been cancelled.

Transfer to another hospital

If your treating doctor believes that you would benefit from moving to a different hospital, or a transfer to another hospital would reduce the risk to you or other people, you can be transferred. If you do not agree that you should be transferred you should talk to your treating team. You can apply to the Mental Health Tribunal to have the decision to transfer you reviewed. If you would like to be transferred to another hospital but your request is refused, you can also ask the Tribunal to review the decision.

When am I no longer an involuntary patient?

You become a voluntary patient if:

- you are on an initial order and an approved medical practitioner does not confirm this order within 24 hours of your admission to hospital;
- the order you are on expires, and you are not placed on another order;
- your doctor discharges the order;
- the Mental Health Tribunal discharges the order.

Becoming a voluntary patient means that you cannot be kept in hospital against your will. However, you may be able to stay in hospital if you and your treating doctor agree you may benefit, or if a discharge plan needs to be developed before you leave .

Review by the Mental Health Tribunal

The Mental Health Tribunal reviews decisions that are made about people who are involuntarily in hospital. The Tribunal will automatically review your situation if you are involuntarily in hospital for over 28 days.

You can also apply to the Tribunal at any stage for a review of the decision to admit you to hospital, whether or not you are still in hospital. You can also apply for a review if you are being transferred to another hospital, or if you have requested a transfer to another hospital and this has been refused. If you would like to apply for a review, ask a staff member or an official visitor for an Application for Review form.

The Mental Health Tribunal must write to you to let you and a family member or close friend or relative know when the review will be held. You have the right to be present at the review unless you hinder or disrupt the proceedings, in which case the Tribunal can ask you to leave.

Important contacts

- **The Mental Health Tribunal**
Telephone: (03) 6233 3033
Facsimile: (03) 6233 4509
- **Official visitors**
Official visitors inspect mental health facilities, investigate complaints by patients and can assist in making an application to the Mental Health Tribunal. To contact the official visitors, please call (03) 6233 2830, or ask to see them on their monthly visits.
- **The Health Complaints Commissioner**
The Office of the Health Complaints Commissioner receives, resolves, investigates and conciliates complaints about all health care services including public, private and alternative health care providers. Complaints can be made about all aspects of service delivery. For further information, or to lodge a complaint, contact the Commissioner's Office on (03) 6233 6348 or toll free on 1800 001 170.
- **The Guardianship and Administration Board**
The Guardianship and Administration Board deals with financial and lifestyle matters including giving consent for medical treatment for people with decision making disabilities. The Board can only deal with matters on application. For further information, contact the Board on (03) 6233 3085.
- **Hospital complaints mechanisms**
All hospitals will have a method of dealing with complaints. If you are not happy with an aspect of your care, ask the official visitors or a staff member how you can complain to the hospital.
- **Freedom of information**
You have a right of access to information about your personal affairs. The right of access to information of a medical or psychiatric nature can be denied if it would be prejudicial to your physical or mental well-being. If this is the case, the information can be provided to a doctor of your choice. For further information contact the Freedom of Information Advisory Unit phone (03) 6233 6217 or fax (03) 6233 8966.
- **Anti-Discrimination Commission and Human Rights and Equal Opportunity Commission**
These Commissions receive and investigate complaints relating to discrimination on the grounds of disability (which includes any psychiatric disability) and other grounds, under the provisions of the *Disability Discrimination Act 1992* and *Anti-Discrimination Act 1998*. Contact the Anti-Discrimination Commission on (03) 6233 4841 or the Human Rights and Equal Opportunity Commission's Tasmanian office on (03) 6234 3599 or 1300 362 231 (outside Hobart).

Community treatment orders

Please take a few moments to read the following information. It will help to explain:

- what a community treatment order is;
- how an order is made;
- what happens when you are on a community treatment order;
- what to do if you are upset about what is happening.

What is a community treatment order?

A community treatment order:

- requires you to receive treatment and care but allows you to be out of hospital;
- may be made as an alternative to being in hospital; or
- is made when being in hospital is no longer necessary but further treatment or care is recommended.

The doctor will ask you to take responsibility for your own care and treatment. If you agree, this would be an undertaking by you to stay with the treatment that you have discussed together.

How is an order made?

To be on a community treatment order you must be examined by two doctors. They will be approved doctors with experience in treating mental illness. Both these doctors must examine you separately within seven days of each other.

Information will be discussed with you and given to you:

- about what the doctor believes is your illness; and
- how he or she wants to support you along with other team members, with treatment and care that will suit you in the best way possible;
- in writing;
- in a way that you understand;
- with someone sitting with you that you trust, if that is what you want or need.

What happens now?

Reasons for your being on an order and for your treatment will be provided and you have a right to question these. Be sure you understand what you are agreeing to.

Your treatment needs to be outlined and possible side effects explained. To get the right treatment for you, you need to let your doctor know about things that might affect your treatment. You can consider options with your doctor if you have special needs that are important to you. The treating team are required to regularly discuss with you diagnosis, medication and different methods of treatment available. You can always ask someone to help – a member of the team, or someone else you trust.

The Mental Health Tribunal will review the order within 28 days. This is to determine whether or not you should be on an order. The Tribunal will contact you, and your relative know when they are reviewing the order. You have a right to be there when they are reviewing the order, and to have someone you trust with you if that is what you want.

Difficulties you may have with the treatment plan

If problems arise, it is best to talk about them as soon as possible with your doctor.

You, or your doctor, may find that you are unable to stick with the treatment plan for whatever reason. It may be possible to change the plan so that it works better or the doctor may ask you to continue treatment in hospital as a voluntary patient or under an initial order or a continuing care order.

What protections are there for me?

Everyone you see – doctors, nurses, psychologists, social workers, occupational therapists, are required to treat you with respect. If at any time you are worried about your care or treatment plan, ask someone you trust to help you.

If you have talked to your doctor, but don't feel that you should be on an order or disagree with the treatment plan, you can apply to the Mental Health Tribunal to review decisions that have been made. Ask for an application form, or contact the Tribunal on (03) 6233 3033.

Official visitors inspect hospitals and make sure that people are doing everything required by the *Mental Health Act*. They can be contacted on (03) 6233 2830.

Other places that can help you if you are not happy with your care or treatment are the Health Complaints Commission (phone (03) 6233 6348 or 1800 001 170) and the Anti-Discrimination Commission (phone (03) 6233 4841).

Other useful contacts

Freedom of Information Advisory Officer

Phone (03) 6234 9200 or 1800 001 170. This is the number to contact if you want know how to go about getting access to information held about you.

Guardianship and Administration Board

This Board deals with financial and lifestyle decisions for people who have illnesses or disabilities which make it hard for them to make decisions for themselves. Phone (03) 6233 3085.

Telephone Interpreter Service

Phone 131450

Disability Discrimination Legal Advocate

Phone 1800 066 019

Statement of legal rights

While you are an involuntary patient, you have the right to:

- have the best possible standard of care and treatment which safeguards your civil rights and identity;
- information about your rights and legal status;
- be given a statement of treatment and diagnosis, in a form that is understandable to you. Your doctor can withhold this information if it will have an adverse effect on your treatment;
- have restrictions on you kept to the minimum necessary to protect you and other people;
- have restraint and seclusion used only to protect you or other people;
- apply to the Mental Health Tribunal for a review of your situation;
- have a decision to keep you in hospital for over 28 days reviewed by the Tribunal regardless of whether you apply for a review;
- see an official visitor;
- have information about you kept confidential. This does not apply to information that you have asked to be disclosed to another person, information that is necessary for your care or treatment or if a court or the Mental Health Tribunal requires the information to be disclosed; and
- be protected from ill-treatment and neglect.