

Chapter Three

Authorised officers

An expanded role under the Mental Health Act 1996

Authorised officers have had a role in the care of people with a mental illness since their introduction under the *Mental Health Act 1963*. In more recent times, other Australian States have introduced these positions as a means of protecting people who do not have relatives from arbitrary hospitalisation and providing the least restrictive means of taking a person to hospital. Under the new Act, the role of authorised officers is expanded. This chapter will explain the role of an authorised officer, and provide some guidelines on how the authorised officer's powers should be exercised.

Who can be an authorised officer?

There are two classes of authorised officers:

- people who have a qualification in a mental health clinical discipline and experience in mental health, (most commonly, the clinical staff employed in community mental health centres); and
- Police officers who have reached the rank of sergeant or above, or who are the officer in charge of a station (on either a temporary or permanent basis).

Appointment as an authorised officer – section 13

Authorised officers are appointed by the Minister. Under the new Act, authorised officers employed by the Department of Health and Human Services will be appointed if:

- they have a qualification in a mental health clinical discipline; and
- they have experience in mental health; and
- their appointment is recommended by their team leader or the head of their discipline.

Authorised officers employed in the Department will only be appointed for the term of their employment within Mental Health Services. Authorised officers may also be appointed for a specified period of time if, for example, there is a need for the service to have access to an authorised officer, but there is a shortfall due to annual leave, or if there is a need for another authorised officer to be available due to the effect on the future clinical or therapeutic relationship. This will be determined by the team leader or Director of the service.

Regulations are being prepared which will ensure that all police officers of the rank of sergeant or above, and all police officers in charge of a station, are authorised officers.

Transitional provisions

People who are authorised officers under the *Mental Health Act 1963* will remain so for the first six months after the *Mental Health Act 1996* commences operation. During this time, all appointments as authorised officers will be reviewed and updated. A database is to be established to record the appointment of authorised officers.

The powers of authorised officers

Under the [Mental Health Act 1996](#), authorised officers have a protective role, as they can take the place of the person responsible and may take a person to hospital, apply for an involuntary hospitalisation order or return a person who is absent without leave to a hospital.

Authorised officers also have the power to enter premises where the person is reasonably believed to be for the purpose of taking the person into protective custody. They may be accompanied by a police officer and may use reasonable force. The professional judgement of an authorised officer is required to decide when it is necessary to use these powers. If there is no risk to safety, an authorised officer can take a person into protective custody and take them to an approved hospital without seeking police assistance. This avoids people with a mental illness experiencing the stigma of being transported by the police when their involvement is not required.

Taking a person into protective custody – [section 15](#)

Under section 15, an authorised officer may take someone into protective custody if they believe on reasonable grounds that:

- the person has a mental illness; and
- there is, as a result of the mental illness, a serious risk of harm to the person or others. The risk of harm includes the risk that the person's physical or mental health will deteriorate.

Belief on reasonable grounds – [section 15\(1\)](#)

To show that the authorised officer has a reasonable belief, the authorised officer must be able to say why they thought that the person has a mental illness, which is defined in section 4.

Whether a person has a mental illness is a matter of the judgement of the authorised officer, based on their professional expertise and experience. Ideally the authorised officer would record, in behavioural terms, why they think the person has a mental illness (for example, because they said that they were hearing voices or because they have attempted suicide).

Protective custody – [section 15\(1\)](#)

Taking someone into protective custody means that the person is requested, and can be required, to go with the authorised officer to an approved hospital or an assessment centre. If it is not possible to take the person straight to an approved hospital or assessment centre, the person can be taken to a safe place with the authorised officer until transport can be arranged.

Entry onto premises – [section 15\(2\)](#)

Section 15(2) allows an authorised officer to enter onto premises for the purpose of taking someone into protective custody if they believe, on reasonable grounds, that the person is on the premises. For the authorised officer to make a decision based on reasonable grounds, they must have some basis for believing the person is at that address.

Use of reasonable force – section 15(3)(b)

The Act also allows reasonable force to be used in taking the person into protective custody. This means that the person may be touched if necessary (this would otherwise be an assault). Reasonable force means that if any force (or touching) of the person is required, it must be proportional to the situation, and be the least force necessary to contain the person. If, for example, the person is willing to go with the authorised officer if she or he is asked, no force is necessary. If the person passively resists, then taking them by the arm may be all that is necessary to take them into protective custody. On the other end of the scale there are situations where the person is threatening another by a raised hand or is about to harm themselves, in which case restraint may be necessary.

Authorised officers, if they decide that force is necessary, may want to assess:

- The urgency of the situation. Is there an immediate risk of physical harm to the person or other people?
- Whether any force is required in this situation? Can the person be asked if they are willing to go with the authorised officer? Would the presence of other people be sufficient?
- What type of force is necessary in this situation? Would taking the person by the arm be sufficient or is restraint required?
- If there is no immediate risk to physical safety of the person or others, have all alternatives been explored? Is the person willing to go to hospital with a relative or friend?

These considerations are not intended to be comprehensive, but provide a guide in using professional judgement to decide when to use force against a person. The central questions are always:

- whether the force is necessary and why; and
- whether the method chosen is appropriate to the situation.

Authorised officers are encouraged to document their reasons whenever the use of force is authorised by them.

Assessment centres

Once an authorised officer has taken a person into protective custody, they must be taken to an assessment centre as soon as possible. Assessment centres are places approved by the Minister. They include all approved hospitals. Having a range of assessment centres would allow reasonable flexibility about where a person may be taken for medical assessment. However, in practice such assessment is best undertaken within an approved hospital, and the provision of additional locations is intended to cover exceptional circumstances such as rural and remote emergencies.

T I M E S



Notify the assessment centre ASAP & within 2 hours

The authorised officer who has taken the person into protective custody must contact the nearest assessment centre as soon as possible to advise that they will be bringing the person in to be assessed. This notification must occur no later than two hours after the person has been taken into protective custody.



Person can be held at an assessment centre for no more than 4 hours

The person can be held at the assessment centre for no more than four hours for the purpose of examination and diagnosis by a medical practitioner. If, at the end of that period, an order for the involuntary admission of the person to an approved hospital has not been made, the person must be released.

Applying for orders

An authorised officer can be the applicant for an initial order ([section 25\(a\)](#)), continuing care order ([section 28\(4\)](#)) or community treatment order ([section 42\(a\)](#)). Unlike the old Act, there is no priority between an authorised officer and the person responsible in making an application for an order. This allows an authorised officer to apply for an order if, for example, the person responsible is concerned about the impact an application will have on their relationship with the person.

The advantage of having the person responsible complete the application lies in their knowledge of the person and their capacity to judge when hospitalisation may be necessary.

Returning a person absent without leave to an approved hospital

If a person who is on an initial order or continuing care order is absent without leave from an approved hospital, or contravenes a condition on which leave was granted, an authorised officer or police officer can take the person into protective custody and return them to the hospital.

To have the authority to do so, the authorised officer or police officer must be given a request in writing signed by the controlling authority (Form 8). Again, the aim in allowing an authorised officer to return the person to the hospital is to allow the person to be returned without the attendance of police, if police presence is not necessary. If there are any safety considerations, or if the whereabouts of the person is not known, the police should be requested to assist.

If the person has been absent without leave for more than 28 days, or the order has expired, they cannot be requested to return to the hospital on the basis of the earlier order.

Legal immunity and offences created

The new *Mental Health Act 1996* makes it lawful for authorised officers to enter a person's premises without warrant and to use reasonable force (or touching of a person). It also authorises the detention of people for treatment in circumstances where the treatment would otherwise be unlawful. If these actions were not permitted by the *Mental Health Act* or another statute, the officer would be left open to liability. This is why authorised officers must show the reasons in the clinical record why they have used their powers.

Immunity from liability for acts or omissions – section 92

Provided that an authorised officer acts in good faith in performing or purporting to perform their duties, (that is, they act in a way consistent with good clinical practice, and without any intention to harm the person), they are given immunity from liability under section 92 of the Act. To obtain the benefit of the immunity under section 92, the action taken must be allowed by the Act, even if it is done in error. The section also provides immunity where an officer, in good faith, omits to take action.

Obstruction of an authorised officer – section 89

One of the few offences created by the Act is obstruction of an authorised officer in the performance of the powers or functions under the Act (section 89). This means that if a person tries to prevent an authorised officer from using their powers under the Act, they can be charged with this offence. This offence is in addition to any other offences (such as assault), that a person may be charged with if they interfere with an authorised officer who is acting within the powers conferred by the Act.

The obligation of confidentiality – section 90

The primary obligation on service providers under the Act is that of confidentiality. The Act states that a person who obtains information of a personal or confidential nature about a person in the exercise of their powers or functions under this Act must not disclose the information unless it is authorised or required by the Act.

Information may be disclosed if and only if:

- the disclosure is authorised by the person to whom it relates; or
- the disclosure is reasonably required for the care or treatment of the person to whom it relates or for the administration of the Act; or
- the disclosure is authorised or required by a court, the Guardianship and Administration Board or the Mental Health Tribunal.

Breaches of a person's confidentiality are treated very seriously under the *Mental Health Act*. A criminal offence has been created, and the Act specifies that the maximum penalty is a fine not exceeding \$5000 or imprisonment not exceeding 2 years or both.

Considerations in making a decision

In deciding when and whether the powers under the Act should be used, authorised officers should keep in mind the objects of the Act in [section 6](#), and the principle of minimum interference with civil rights in [section 7](#).

Authorised officers may also want to consider:

- any available information about the person (for example age, living circumstances, past history or possibility of resistance);
- whether voluntary admission has been offered as a first option;
- whether there is a person responsible who would prefer to be the applicant instead of the authorised officer;
- whether there is any therapeutic conflict which may arise from the authorised officer's involvement;
- whether the authorised officer will be safe in going into premises, or whether the assistance of police, ambulance officers, a doctor or other health worker is required;
- if the person is taken to an approved hospital, whether there a relative or significant other who should be notified; and
- if the person lives alone, whether security of their property (and care of any pets) has been addressed.

Key
points

Authorised officers

Appointment of authorised officers

- Health professionals may be appointed as authorised officers if they:
 - (a) have a qualification in a mental health clinical discipline;
 - (b) have experience in mental health;
 - (c) are recommended to be appointed as an authorised officer by their team leader or head of discipline.
- Police may be appointed as authorised officers if they:
 - (a) are of the rank of sergeant or above; or
 - (b) are the officer in charge of a station.

Role of authorised officers

Authorised officers have the following roles under the Act:

- Take a person into protective custody if they have:
 - (a) a reasonable belief that the person has a mental illness; and
 - (b) as a result of the mental illness, there is a serious risk of harm to the person or others.In order to do so they may:
 - (a) enter onto premises; and
 - (b) use reasonable force.
- Make an application for an initial order, a continuing care order or a community treatment order.
- Return a person who is absent without leave to an approved hospital.

Protections under the Act

- An authorised officer is protected from personal liability if:
 - (a) they acted in good faith; and
 - (b) the act is one that is allowed by the Act.
- It is an offence to obstruct an authorised officer in the execution of their duty.

Obligations on staff under the Act

- maintain confidentiality;
- ensure that people with a mental illness are not ill treated or neglected.