

# **New South Wales Consolidated Acts**

[Index] [Table] [Search] [Search this Act] [Notes] [Noteup] [Download] [Help]

### **MENTAL HEALTH ACT 2007**

```
- As at 27 May 2024
- Act 8 of 2007
TABLE OF PROVISIONS
                Long Title
CHAPTER 1 - PRELIMINARY
                Name of Act
    <u>2</u>.
                Commencement
                Objects of Act
                Definitions
CHAPTER 2 - VOLUNTARY ADMISSION TO FACILITIES
                Admission on own request
   <u>6</u> . <u>7</u> . <u>8</u> .
                Voluntary admission of children
Voluntary admission of persons under <u>guardianship</u>
                Discharge of voluntary patients
    9.
                Review of voluntary patients
                Detention of voluntary patients in mental health facilities
                Review of decisions made by authorised medical officer to refuse admission or discharge voluntary patient
CHAPTER 3 - INVOLUNTARY ADMISSION AND TREATMENT IN AND OUTSIDE FACILITIES
    PART 1 - REQUIREMENTS FOR INVOLUNTARY ADMISSION, DETENTION AND TREATMENT
                General restrictions on detention of persons
    13
14
                Criteria for involuntary admission etc as mentally ill person or mentally disordered person
                Mentally ill persons
    15.
                Mentally disordered persons
    <u>16</u>.
                Certain words or conduct may not indicate mental illness or disorder
    PART 2 - INVOLUNTARY DETENTION AND TREATMENT IN MENTAL HEALTH FACILITIES
                Division 1 - Preliminary
    17.
                Definitions
                Division 2 - Admission to and initial detention in mental health facilities
    <u>18</u>.
<u>19</u>.
<u>19A</u>.
                When a person may be detained in <u>mental health facility</u>
                Detention on certificate of medical practitioner or <u>accredited person</u>
Examination by audio visual link for purposes of <u>mental health certificate</u>
    20.
21.
22.
23.
24.
25.
26.
27.
27A
28A
29.
30.
                Detention on information of ambulance officer
                Police assistance
                Detention after apprehension by police
                Detention after order for medical examination or observation
Detention on order of Magistrate or bail officer
                Detention after transfer from another health facility

Detention on request of <u>designated carer</u>, <u>principal care provider</u>, relative or friend

Steps for medical examination requirements for ongoing detention in <u>mental health facility</u>
                Examinations by medical practitioners or accredited persons for purposes of detention
                Obligations of examining medical practitioners and <u>accredited persons Tribunal</u> to be informed if detained person is a <u>forensic patient</u>
Treatment of persons detained in mental health facilities
                <u>Assessable persons</u> may be reclassified as <u>voluntary patients</u> 
Limited detention of <u>mentally disordered persons</u>
    <u>31</u>.
                Detention on order of Magistrate or bail officer
                Actions may be delayed because of other illnesses or conditions
                Division 3 - Continuing detention in mental health facilities
    34
35
36
37
38
39
                Mental health inquiries to be held
                Purpose and findings of mental health inquiries
                Adjournments
                Reviews of <u>involuntary patients</u> by <u>Tribunal</u>
Purpose and findings of reviews of <u>involuntary patients</u>
                Medical examination of <u>involuntary patients</u>
    40
41
42
43
43A
                Re-classification of <u>involuntary patients</u> as <u>voluntary patients</u>
                Discharge on making of community treatment order
               Discharge of <u>involuntary patients</u> on own application
Discharge of <u>involuntary patients</u> on own application of <u>designated carer</u> or <u>principal care provider Tribunal</u> to be informed of discharge of a <u>forensic patient</u>
Appeals against discharge refusals
Review and discharge of absent <u>patients</u>
    <u>44</u> .
<u>45</u> .
```

#### PART 3 - INVOLUNTARY TREATMENT IN THE COMMUNITY

Police assistance

<u>46</u>.

48

Division 4 - Leave of absence from mental health facilities

Leave of absence on compassionate grounds, medical grounds or other grounds Apprehension of persons not permitted to be absent from <u>mental health facility</u>

## Division 1 - Applications for and making of community treatment orders 50. 51. 52. 53. 54. 55. <u>Definitions</u> Community treatment orders Notice of applications Determination of applications for community treatment orders Requirements for treatment plans under community treatment orders Community treatment order may be made in absence of affected person Form and duration of community treatment orders Division 2 - Operation of community treatment orders Duties and <u>functions</u> of affected person and <u>mental health facility</u> 57. 58. 59. 60. 61. 61A. 62. Breach of community treatment order Police assistance Procedures at facility after breach notice or breach order Review of affected person at <u>mental health facility</u> after breach order Medical examination of detained affected persons Discharge and detention of affected persons Review of detained affected persons by Tribunal Purpose and findings of reviews Division 3 - Revocation, variation and review of community treatment orders Variation or revocation of orders by <a href="Tribunal">Tribunal</a> <u>65</u>. <u>66</u>. Revocation by <u>director of community treatment</u> 66A Notifications <u>67</u>. Appeals CHAPTER 4 - CARE AND TREATMENT PART 1 - RIGHTS OF PATIENTS OR DETAINED PERSONS, DESIGNATED CARERS AND PRINCIPAL CARE PROVIDERS Division 1 - General Principles for care and treatment Offence to ill-treat <u>patients</u> Prohibition on use of spit hoods 68. 69. 70. 71. 72. 72A. 72B. Assistance of interpreters <u>Designated carers</u> Nomination of <u>designated carers</u> Principal care providers Requirement to consider information provided by other persons about patients or detained persons when making detention or discharge Division 2 - Notification and information sharing 73. 74. 74A. 75. 76. 77. 78. Information about medication Information to be given to persons to be detained Information to be given to <u>voluntary patients</u> Notification to carers of initial detention Notification of mental health inquiries Notification to new <u>involuntary patients</u> of appeal rights Notifications to <u>designated carers</u> and <u>principal care providers</u> of events affecting <u>patients</u> or detained persons Discharge and other planning Division 3 - Transfer of patients Transfer of patients to or from mental health facilities Transport of persons to and from mental health facilities and other health facilities PART 2 - MENTAL HEALTH TREATMENTS Division 1 - Preliminary 82. Definitions Division 2 - General provisions about mental health treatment <u>83</u>. <u>84</u>. Prohibited treatments Treatment may be given to patients Administration of excessive or inappropriate drugs Review of drug use in mental health facilities Division 3 - Electro convulsive therapy 87 88 89 90 91 92 93 Definitions Offences relating to administration of electro convulsive treatment When electro convulsive therapy may be administered Refusal of treatment by <a href="medical superintendent">medical superintendent</a> Informed consent requirements Person impaired by medication incapable of giving informed consent When electro convulsive therapy may be administered to persons other than <u>involuntary patients</u> or persons under 16 94. When electro convulsive therapy may be administered to involuntary patients or persons under <u>Tribunal</u> to hold inquiries promptly Purpose and findings of ECT inquiries Electro convulsive therapy register <u>95</u> . 96 97 PART 3 - OTHER MEDICAL TREATMENTS **Definitions** 99 100 Emergency surgery for <u>involuntary patients</u> Secretary may consent to surgery <u>Tribunal</u> may consent to surgery Special medical treatment 101 102 103. <u>Tribunal</u> may consent to special medical treatment

Effect of consents

#### CHAPTER 5 - ADMINISTRATION PART 1 - ADMINISTRATIVE OBJECTIVES AND FUNCTIONS Objectives of New South Wales public health system 106 107. <u>Functions</u> of <u>Secretary</u> Delegation 108. Annual report PART 2 - MENTAL HEALTH FACILITIES Division 1 - Declared mental health facilities Establishment of declared mental health facilities 110. Declared mental health facilities that are private mental health facilities Appointment of <u>medical superintendents</u> Appointment of deputy <u>medical superintendents</u> <u>111</u>. <u>112</u>. Directors and deputy directors of community treatment 113 114 Psychiatric case managers Division 2 - Private mental health facilities Application for licence <u>116</u>. Grant or refusal of licence Duration of licence 117 118 Annual statement and licence fee 119. Duplicate licence Cancellation of licences--generally Cancellation of licences--failure to show cause 120. 121. 122. 123. 124. 125. Variation of licence Provision of medical services in private mental health facilities Medical superintendents Deputy medical superintendents 126. Unlicensed private mental health facilities 127. Certain private health facilities to be licensed PART 3 - OFFICIAL VISITORS AND ACCREDITED PERSONS Principal official visitor 129. Official visitors <u>130</u>. General provisions relating to the Principal official visitor and official visitors <u>131</u>. Inspections of mental health facilities by official visitors <u>132</u>. Obligations to facilitate <a href="mailto:exercise">exercise</a> of <a href="functions">functions</a> by official visitors 133. Reports to Minister Request by <u>patient</u> or other person at <u>mental health facility</u> to see official visitor Request by <u>patient</u> or other person at other health facility to see official visitor 134 134A. <u>135</u>. Official visitors not personally liable Accredited persons 136. PART 4 - INSPECTION POWERS Inspection of mental health facilities <u>137</u>. Powers of authorised officer to require information, evidence, production of records 138. 139. Protection from incrimination CHAPTER 6 - MENTAL HEALTH REVIEW TRIBUNAL PART 1 - THE TRIBUNAL Constitution of the Tribunal <u> 141</u>. Membership of <u>Tribunal</u> Registrar and other staff of the <u>Tribunal</u> <u> 142</u>. 143. Authentication of documents 144 Judicial notice of certain signatures <u> 145</u>. Certain proceedings prohibited <u> 146</u>. Application of Defamation Act 2005 to proceedings of Tribunal 147. Annual report 148 Delegation PART 2 - PROCEDURES OF THE TRIBUNAL Application of Part <u> 150</u>. Composition of <u>Tribunal</u> 151 152 153 154 Procedure at meetings of <u>Tribunal</u> to be informal Legal representation of <u>mentally ill persons</u> and other persons Determination whether a person is a <u>mentally ill person</u> or <u>mentally disordered person</u> Rights of appearance and representation 155. Adjournments <u> 156</u>. Inspection etc of medical records Production of evidence Assistance of interpreters <u> 157</u>. <u>158</u>. 159. Record of proceedings <a href="Tribunal">Tribunal</a> procedure generally Contempt of <a href="Tribunal">Tribunal</a> 160. <u> 161</u>. Publication of names 162A. <u>Tribunal</u> may request information or services from other agencies CHAPTER 7 - JURISDICTION OF SUPREME COURT Appeals to the Court 164. Power of the <u>Court</u> on appeals

#### Jurisdiction of $\underline{\text{Court}}$ to order discharge or transfer of detained person Other jurisdiction of the $\underline{\text{Court}}$ not affected $\underline{\text{Tribunal}}$ members not liable for costs 167. 168

Panel of assessors

165.

166

```
<u> 169</u>.
             Object of Chapter
   <u>170</u>.
             Definitions
   <u>171</u>.
             Authority to enter into agreements
            Corresponding laws, documents and interstate <u>community treatment orders</u>
New South Wales officers may <u>exercise functions</u> under corresponding laws
   <u>172</u>.
173.
   PART 2 - TRANSFER OF PATIENTS AND PERSONS
             Division 1 - Transfer of persons from this State
   <u>174</u>.
<u>175</u>.
             Admission of persons to mental health facilities in other States
             Effect of certificates
   176
             Transfer of patients from this State
             Division 2 - Transfer of persons to this State
   177
178
179
             Admission of interstate persons to mental health facilities in this State
             Application of Acts to persons brought to mental health facility from outside this State
             Transfer of interstate persons to mental health facilities in this State
   180.
             Status of transferred persons
   PART 3 - COMMUNITY TREATMENT ORDERS AND OTHER ORDERS
            \frac{\textit{Community treatment orders}}{\textit{Interstate implementation of New South Wales orders}}
   181.
   182.
             Provision of services under interstate community treatment order
   183.
   184.
             Recognition of interstate community treatment orders
   PART 4 - APPREHENSION OF PERSONS ABSENT FROM MENTAL HEALTH FACILITY OR IN BREACH OF ORDERS
             Recognition of warrants and orders
   186.
             Apprehension of interstate persons absent without leave or in breach of corresponding orders
   187.
             Regulations relating to apprehension of persons
CHAPTER 9 - MISCELLANEOUS
             Restrictions on holding of certain offices
   189.
             Disclosure of information
   <u> 190</u> .
             Act does not limit or affect other powers
             Liability of certain persons exercising <u>functions</u> under this Act or the <u>Mental Health and Cognitive Impairment Forensic Provisions</u>
Service of documents
   191.
192.
193.
194.
195.
             Amendment of certain documents
             Approved forms
             Role of objects provisions
             Regulations
   <u> 196</u>.
   <u> 197</u>.
             Proceedings for offences
   198
             Savings, transitional and other provisions (Repealed)
   199.
             Repeal of <u>Mental Health Act 1990</u> No 9
Review of Act
   <u>200</u>.
<u>201</u>.
             202, 203. (Repealed)
             SCHEDULE
             Schedule 2 (Repealed)
             SCHEDULE 3
SCHEDULE 3A
             SCHEDULE 4
             SCHEDULE 5
             SCHEDULE 6
```

AustLII: Copyright Policy | Disclaimers | Privacy Policy | Feedback

Schedule 7 (Repealed)

PART 1 - PRELIMINARY