

# Patient Rights

The *Mental Health Act 2016* provides a legislative framework for the treatment and care of persons with a mental illness without their consent. In recognition of this, the Act contains extensive safeguards for the treatment and care of patients, including provisions which ensure the protection of patient rights.

## What are a patient's rights under the Act?

Some of the key rights under the Act are as follows:

- A person is presumed to have capacity to make decisions about their treatment and care, and the right to consent, or not consent, to healthcare.
- A person cannot be treated without consent under a treatment authority if the person has capacity; there must also be a risk of serious harm or deterioration.
- A person must be treated under an advance health directive, or with the consent of an attorney or guardian (and not under a treatment authority) if the person's treatment needs can be met in that way.
- A patient on a treatment authority must be placed on a community category (and therefore live in the community) unless the person's treatment needs cannot be met this way.
- A patient has a right to receive accurate, timely and appropriate information about their healthcare.
- A patient must be given oral explanations and be involved in clinical decisions at key stages.
- A patient must be given written information for matters concerning them, such as the making of a treatment authority.
- A patient may seek an independent second opinion if there are unresolved concerns about the patient's treatment and care.
- A patient may communicate by phone or electronic device while an inpatient, unless it is likely to be detrimental to the health or wellbeing of the person or others.
- A patient may be visited by nominated support persons, family, carers, other support persons, unless specifically excluded under the Act.
- A patient may be visited by health practitioners and legal advisers.
- A patient may appoint one or two 'nominated support persons'.
- A patient may request a free psychiatrist report if charged with a serious offence and have the matter referred to the Mental Health Court.
- A person before a magistrate may have the charges dismissed if found to be of unsound mind at the time of the offence or unfit for trial.

## What is the Statement of Rights?

The chief psychiatrist must prepare a *Statement of Rights* which contains information about the rights of patients and support persons under the Act.

An administrator of an authorised mental health service must arrange for the *Statement of Rights* to be explained to a patient when the patient is admitted.

Patients or support persons can request a copy of the *Statement of Rights* from the service.

A *Guide to Patient Rights under the Mental Health Act 2016* is also available to assist persons who want a detailed understanding of patient rights.

## Who can advise a patient of their rights?

Authorised doctors, authorised mental health practitioners and other clinical staff have a responsibility to tell, explain and discuss certain matters with patients.

Public sector authorised mental health services must engage Independent Patient Rights Advisers whose role is to assist patients and support persons in understanding their rights under the Act.

Independent Patient Rights Advisers are not subject to the direction or control of any person in the way they provide advice.

### Who is the Chief Psychiatrist?

The chief psychiatrist is a legislative position established by the Act. A key function of the chief psychiatrist is to protect the rights of patients in authorised mental health services. The role, function and powers of the chief psychiatrist under the Act are outlined in the *Chief Psychiatrist Fact Sheet*.

### Who are community visitors?

The Public Guardian operates community visitor programs for adults and minors. The purpose of these programs is to protect the rights and interests of patients at 'visitable sites', which include authorised mental health services.

A patient, or someone on the patient's behalf, may ask the Public Guardian or a staff member at the service to arrange for a community visitor to visit the service.

### What rights to support persons have in supporting patients?

A patient's family, carers and other support persons play a crucial role in supporting patients when they are unwell, and throughout all stages of treatment, care and recovery.

Support persons are recognised throughout the Act and are afforded a number of important rights and responsibilities. These rights are outlined in the *Fact Sheet: Rights of Family, Carers and Other Support Persons*.