

Negotiating Compulsory Treatment of Eating Disorders in Hospital and the Community

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The Mental Health Act 2007 (NSW) (MHA) deals with the care and treatment of persons with severe mental illness in NSW. Some of the functions of the MHA:

- It establishes the system of public mental health care, and provides for the licensing of private mental health facilities in NSW;
- It sets out the circumstances in which persons with mental illness may be admitted to and treated in public hospital based mental health facilities on either a voluntary or involuntary basis;
- It sets out the circumstances in which a person with a mental health disorder may be subject to compulsory treatment provided by a public mental health facility in the community;
- It regulates some specific forms of mental health treatment, such as Electroconvulsive Therapy; and
- It establishes the Mental Health Review Tribunal, which authorises and reviews the compulsory treatment of persons with mental illness and mental health disorders in hospital and the community.

Reference <http://mhrm.mhcc.org.au/chapter-2/2b.aspx> sourced 6 June 2016

What is Guardianship?

A Guardian appointed under the Guardianship Act 1987 (NSW) may be appointed with 'total' decision-making responsibility for you (called Plenary Guardianship), or with specific decision-making responsibilities for you (called 'Limited Guardianship'). The terms of a Guardianship Order must be the least restrictive necessary in the circumstances that give rise to the need for a Guardian. Plenary Guardianship can rarely be justified as the least restrictive alternative, and such orders are rarely, if ever, made. Instead, the Guardianship Division appoints Guardians with specific, or 'limited,' powers or functions where there is a need for a decision or decisions to be made. This means that the guardian can make decisions in specific areas of a person's life.

Reference: <http://mhrm.mhcc.org.au/chapter-5/5b.aspx> sourced 06 June 2016

The most common areas of Guardianship are:

- Accommodation: deciding where the person should live;
- Health care: deciding what medical and dental health care providers the person should see;
- Consent to medical and dental treatment: acting as the person's substitute decision-maker about medical and dental treatment proposed for them by others; and
- Services: authorising others to provide personal services (such as home care) to the person (usually to assist them to live in their own home).

What is capacity?

Generally it is the ability for an adult to make a decision for themselves. Generally when a person has capacity they can understand the facts and the choices involved; weigh up the consequences; and communicate the decision.

The Office of the Public Guardian have published a *Capacity Toolkit*:

http://www.publicguardian.justice.nsw.gov.au/Documents/capacity_toolkit0609.pdf

Consumer rights in Mental Health Law

'Pushing the Boundaries: Realising Rights through Mental Health Tribunal Processes?' Carney, Tait & Beupert, Sydney Law Review Vol. 30:329.

https://sydney.edu.au/law/slr/slr30_2/Carney.pdf

More information & references

- The NSW Mental Health Act (2007)
http://www.austlii.edu.au/au/legis/nsw/consol_act/mha2007128/
- The NSW Institute of Psychiatry have published a freely available guidebook to the MHA (2007); section 6 pp35-47 covers Involuntary Admissions
<http://www.health.nsw.gov.au/mhdao/publications/Publications/pub-act-2007-guide.pdf>
- Revisions to the NSW Mental Health Act (2007; amendments in 2014)
http://mhrt.nsw.gov.au/assets/files/mhrt/pdf/InfoBulletin2015_040.pdf
- The NSW CEDD Guidelines for the Inpatient Management of Adult Eating Disorders in General Medical and Psychiatric settings in NSW
<http://cedd.org.au/wordpress/wp-content/uploads/2013/09/Final-Print-Version-Adult-Inpatient-Guidelines-2014.pdf>
- Mental Health Advocacy Service ph: 02 9745 4277
- Information about the Office of the Public Guardian
<http://www.publicguardian.justice.nsw.gov.au>
- Information about the Mental Health Review Tribunal:
<http://mhrt.nsw.gov.au/the-tribunal/>
- Article on capacity:
Capacity concerns in mental illness. Swannel, C. (2014), *MJA InSight*
<https://www.mja.com.au/insight/2014/1/capacity-concerns-mental-illness>
- Associate Professor Tim Wand's article on human rights law and the mental health act 'Admit voluntary, schedule if tries to leave': placing Mental Health Acts in the context of mental health law and human rights. *Australas Psychiatry*. 2013 Apr;21(2):137-40.
<http://www.ncbi.nlm.nih.gov/pubmed/23426098>