

Becoming an Involuntary Patient – Changes to the External Review Process (Mental Health Inquiry)

What is a Mental Health Inquiry?

A mental health inquiry provides an external review of a person detained in a psychiatric hospital to determine whether they should continue to receive inpatient treatment or be discharged.

What is going to change about the way that Mental Health Inquiries are conducted?

Magistrates replaced by Mental Health Review Tribunal

Mental Health Inquiries will now be conducted by the Mental Health Review Tribunal (MHRT) rather than a Magistrate. The MHRT is an independent body that has powers to make decisions under the NSW Mental Health Act 2007. It can make and review orders and hear appeals about the treatment and care of people with a mental illness.

Inquiries held after minimum of 2 weeks detention

Most Mental Health Inquiries will now generally be held after a person has been detained in a hospital for at least two weeks to allow the hospital adequate time to properly assess and plan treatment for the detained person. If an Inquiry is conducted, the hospital will provide the MHRT with all necessary documentation, and at the Inquiry a Doctor will give an account regarding the detained person's condition.

Mental Health Inquiry will be conducted via video link

Inquiry hearings will be held by video link at most locations across NSW although some inquiries will be conducted in person at two large metropolitan centres. These inquiries will be conducted by legally qualified members of the MHRT with expertise in the mental health review field.

When will these changes happen?

These changes will come into effect as of 21 June 2010.

As of 21 June 2010, the process of conducting an independent review into the mental health of people detained in a hospital has changed.

This information sheet provides advice about how this external review process, has changed, and where to go for further advice.

Why have these changes been made?

Under the previous system, when a person was admitted and detained in a hospital for assessment and treatment they were brought before a Magistrate, generally within a week of the person's admission. The Magistrate would hold an Inquiry to determine whether the person should be made an involuntary patient or discharged.

Amendments to the NSW Mental Health Act 2007 have removed the requirement for a Magistrate to conduct the Mental Health Inquiry. The MHRT will now conduct both the Mental Health Inquiry and any subsequent reviews if required, providing a greater level of consistency to the review process for detained people and involuntary patients. The MHRT also offer a greater body of knowledge of mental health matters and seeing a body called the 'The Tribunal'(MHRT) is considered to be less stigmatising for consumers than seeing a magistrate.

Do these changes affect the rights of people detained in hospital?

People detained in hospital are still entitled to be discharged immediately when they are well enough. These changes will not take away from the important rights of people who are detained involuntarily to request their discharge and appeal if this request is not met. This appeal is to be heard as soon as possible. Detained people have these rights from the time of their admission. These rights are made clear under the NSW Mental Health Act 2007:

- Anyone detained in a mental health facility can ask to be discharged (s42 of the Mental Health Act 2007).
- This request can also be made by the detained person's primary carer (s43 of the Mental Health Act 2007).
- If this request is refused or not determined within 3 working days, anyone, including the detained person, or their primary carer, can appeal to the Tribunal (s44 of the Mental Health Act 2007).
- These rights must be explained to the detained person.

Monitoring and Evaluation

A group has been formed to monitor the impact of the changes to the Mental Health Inquiry process. This group has representatives from NSW Health, the Mental Health Review Tribunal and the Mental Health Advocacy Service as well as the major mental health peak bodies, including:

- Mental Health Coordinating Council (MHCC)
- NSW Consumer Advisory Group – Mental Health Inc. (NSW CAG).
- ARAFMI
- The Public Interest Advocacy Centre Ltd (PIAC)
- Mental Health Association (MHA)

A formal evaluation will be undertaken to assess the effectiveness of the changes in improving the Mental Health Inquiry process, and stakeholders, including consumers and carers, will be asked to participate.

For more information about...

The Mental Health Inquiry Process

contact

The Mental Health Review Tribunal

02 9816 5955

www.mhrt.nsw.gov.au

The rights of people detained in a hospital

contact

The Mental Health Information Service

1300 794 991

www.mentalhealth.asn.au

How to lodge an appeal about being detained in a hospital

contact

The Mental Health Advocacy Service

02 9745 4277

www.legalaid.nsw.gov.au

Key Messages

ABOUT THE MENTAL HEALTH INQUIRY PROCESS

A *mental health inquiry* is the review to determine whether a person detained in a mental health hospital should be made an *involuntary patient*

- A **mental health inquiry** must be held to decide whether a person who has been detained in hospital should continue to be detained for treatment, be treated within the community or be discharged.
- If the inquiry determines that the *detained person* should continue to be detained for treatment, they become an *involuntary patient* under the Mental Health Act 2007

As of 21 June Inquiries will be conducted by the Mental Health Review Tribunal (MHRT)

- Under the previous system, Mental Health Inquiries were conducted by a Magistrate, with any subsequent reviews held by the MHRT.
- Recent amendments to the Mental Health Act 2007 mean that as of 21 June, Inquiries as well as any subsequent reviews will be conducted by the MHRT.

Detained people still have the right to request discharge at any time

- The rights of detained people have not changed.
- Detained people still have the right to request their discharge from the hospital, from the time they are first detained.
- They also have the right to appeal to the MHRT if this request is refused or no decision is made.

Primary carers also have the right to request that the facility discharge the detained person

- Primary carers rights also remain unchanged.
- The detained person's primary carer can request that the detained person is discharged from the hospital, and anyone, including the detained person and their primary carer, can appeal to the MHRT if this request is refused, or no decision is made.

Hospitals can discharge a detained person at any time

- Hospitals do not have to wait for the Mental Health Inquiry hearing before they can discharge a detained person.
- If they believe the detained person is well enough to be discharged prior to the Inquiry they may take this step, at any time.

Mental Health Inquiries may be conducted using video conferencing

- Conducting hearings by video conferencing has been happening in many areas across NSW for more than 10 years.
- In special cases it may be possible to make alternative arrangements by contacting the Tribunal

Mental Health Inquiries will be conducted after the person has been detained for a minimum of 2 weeks

- Mental Health Inquiries will generally be held only after a person has been detained in a mental health facility for more than 2 weeks. This will allow adequate time for the treating team to properly assess and treat the person's illness and to develop a plan for discharge, if appropriate.

A group has been formed to monitor the impact of the changes

- NSW Health, the MHRT, and major mental health peak bodies have formed a group to monitor the impact of the changes.
- A formal evaluation will assess the new Inquiry process, and stakeholders, including consumers and carers, will be asked to participate.