

# Carers and the Mental Health Act 2007

A consumer can allow carers access to their private health information, just like with any other patient. However, if this access is denied and you are a designated carer or a principal care provider you may still be involved in the following ways.

## Notification to carers of certain events affecting the consumer

- Detention in a mental health facility (MHF)
- Any absences without permission from a MHF or any failure to return from leave
- Reclassification of admission as an voluntary patient
- Date and time of the Mental health inquiry (see Form 2 attached)
- Any discharge from the MHF
- An application for a Community Treatment Order (CTO),
- If the CTO is varied or revoked
- The revocation of a CTO, before it is revoked;
- No further CTO application will be made.
- Any application to the Tribunal for medical treatments (e.g. ECT, surgery or special medical treatment).
- Any proposed transfer to another facility before it occurs, except in the case of an emergency.

## Carers can request:

- That the consumer be admitted to a MHF
- A CTO. As applicants, carers will require the treating team to prepare the treatment plan
- That the consumer they are caring for, be discharged from the MHF, and if refused, an appeal to the Tribunal against the refusal to discharge
- An Official Visitor visit
- Information about the type and dose of medication that is being given or has been recently given

## Clinicians must consider information\* carers have:

- That is relevant to the decision to further detain the consumer, after an involuntary admission
- That is relevant to the decision to discharge.

\*eg carers may have observed behaviour which could assist in forming an opinion about the need for involuntary care

Carers can give information about personal observations about a person's behaviour which may be useful in overall care and treatment – but they cannot hand over private health information without the person's consent.

**Unless permission is given by the consumer**, not all information can be accessed: e.g. diagnosis, treatment (other than medication), results and details of tests and assessments and the content of conversations between doctors and consumers cannot be provided without the consumer's permission.

### **Clinicians must provide information to carers about:**

- **discharge and recovery planning; including**
  - The availability of patient support groups, community care groups near the MHF, including the services provided by the groups, and how to contact them.
  - Outpatient consumer or other services available at the MHF
  - Describing the purpose and method of obtaining CTOs
  - Describing other similar follow-up services, as may be available near the MHF.
  - Clinicians must consult with agencies/services that are relevant to carers, the consumer, or any dependants of the consumer.

### **Carer involvement in tribunal hearings**

- Tribunal hearings are not like a court hearing. They are informal hearings. The Tribunal still must make decisions based on the evidence given at hearings, and according to legal criteria set out in the MHA.
- The consumer must be given a fair hearing and is entitled to notice of the hearing, to know the evidence put forward and have an opportunity to be heard and ask questions.
- Hearings may provide an opportunity for carers to discuss treatment and care, including any support that may be given to the consumer.
- Hearings are open to the public and carers are usually able to attend. Carers can relate a broad range of issues to the Tribunal, to the treating team or to the case manager. However, sometimes their attendance is not possible because of the attitude of the consumer. In such cases, the Tribunal can be flexible in the way it runs hearings and take evidence separately if need be; or involve carers by telephone; or decide that carers should be directly involved.
- Carers may also communicate through written responses, including letters to the Tribunal. If a written response is sent to the Tribunal and it contains information that is significant to the decision that the Tribunal is considering, then usually the content of the letter must be disclosed to the consumer and their lawyer, so the consumer has an opportunity to respond.

## Some tips for carers

- Establish ongoing contact with the MHF and be involved so you will be consulted.
- The best way to get information is to have the consumer's consent (when they are well) or be nominated as a designated carer. When the consumer is well, consider arranging for the consumer to make a statutory declaration or to provide a written consent for you to have access to the consumer's files. These consents should be supervised by a lawyer.
- Principal care providers should be automatically involved and consulted by treating teams, unless the consumer has excluded them in the designated carer nomination.
- It is easier to deal with one family member than several - nominate that person.

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For help in understanding some of the terms used in this summary, the Commission recommends a resource on carers rights created by Mental Health Carers NSW:  
<http://www.arafmi.org/2016/05/designated-carers-principle-care-providers-rights/>

You may also like to read through the relevant legislation:  
*Mental Health Act 2007*: [http://www.austlii.edu.au/au/legis/nsw/consol\\_act/mha2007128/](http://www.austlii.edu.au/au/legis/nsw/consol_act/mha2007128/)



## Annexure

### Form 2

(Clause 5)

([Mental Health Act 2007](#), section 76 (3))

#### **Mental health inquiry—[Mental Health Act 2007](#)**

Mental health facility .....

Address .....

### **Notice of proceedings before Mental Health Review Tribunal**

Dear .....

I wish to advise you that [*patient's name*] is at present a patient at this mental health facility under the provisions of the [Mental Health Act 2007](#).

On [*date*] at approximately [*time*] the Mental Health Review Tribunal will hold an inquiry at [*location*] to consider whether or not further detention for the purpose of treatment is warranted.

You are invited to attend this inquiry. With the permission of the patient and the Tribunal, any person at all may represent the patient. However, the patient will be legally represented unless the patient decides that he or she does not want to be. Should it be necessary, a competent interpreter will be available to assist.

If the Tribunal considers further detention is warranted the Tribunal will also consider whether or not the patient is able to manage his or her affairs. If the Tribunal considers that the patient is able to do so, then the patient will continue to do so. If the Tribunal is not satisfied that the patient can manage his or her affairs, then an order will be made that the NSW Trustee and Guardian manage the patient's affairs.

If the patient does not agree that his or her affairs should be managed by the NSW Trustee and Guardian, the patient may appeal to the Supreme Court or the Civil and Administrative Tribunal.

If you have any questions, please feel free to discuss them with the patient's doctor or social worker. Contact may be made by telephoning [*telephone number*].

Yours faithfully,

[*Authorised medical officer*]

[*Date*]