

What are Involuntary Patient Orders?

Involuntary patient orders are used to detain people with a mental illness in a mental health facility where the person does not agree on a voluntary basis to treatment and/or hospitalisation. If a person is detained for treatment in a mental health facility they may be brought before the Tribunal for a mental health inquiry within 2-3 weeks. At a mental health inquiry the Tribunal can make an Involuntary Patient Order and set a maximum period of detainment of no longer than three months. The mental health facility must provide the patient with a written statement of their rights before the mental health inquiry and make every effort to ensure that the patient is in street clothes when brought before the Tribunal.

If the mental health facility wishes to extend a person's involuntary stay beyond the initial period set at the mental health inquiry then they must apply to the Tribunal for a further Involuntary Patient Order before the first order expires.

When making an Involuntary Patient Order the Tribunal must consider whether or not the patient is a "mentally ill person" (as defined in the Act), and if they are at risk of serious harm to themselves or others.

If the Tribunal decides that the person is not a "mentally ill person", or if other care outside the mental health facility of a less restrictive kind is available and appropriate, then the person must be discharged. Discharge can be deferred for a period of up to 14 days by the Tribunal.

Involuntary Patient Review

If a further order is made by the Tribunal, the patient continues to be detained as an involuntary patient until he or she is well and no longer considered a "mentally ill person" as defined by the Act. The Tribunal must review each involuntary patient at least once every three months for the first 12 months and after that at least once every six months. If considered appropriate the Tribunal can review long term patients at intervals of up to 12 months.

If the Tribunal decides that the patient is a "mentally ill person" and that no other care of a less restrictive kind that is consistent with safe and effective care is available to the person, he or she will continue to be detained as an involuntary patient for further observation and/or treatment.

The Authorised Medical Officer is under an ongoing obligation to "examine each involuntary patient to determine whether the patient's continued detention in the facility is necessary". A patient must be discharged if they no longer require care and treatment on an involuntary basis in a mental health facility; or there is a less restrictive option, consistent with safe and effective care.

Requests for Discharge and Appeals

An involuntary patient or a person who is detained in a mental health facility may apply to an Authorised Medical Officer (AMO) to be discharged under section 42 of the *Mental Health Act 2007*. The designated carer(s), principal care provider or other person appointed by the patient

can also request that the patient be discharged under section 43. This request may be made orally or in writing to the Authorised Medical Officer.

What will the Authorised Medical Officer do?

The Authorised Medical Officer has three working days in which to respond to the request. The Authorised Medical Officer can discharge the patient; make the patient a voluntary patient; refuse discharge; or discharge the patient if the designated carer(s) or principal care provider gives a written undertaking that the patient will be properly looked after.

When is the Tribunal involved?

If the Authorised Medical Officer refuses a request for discharge, or has not made a decision on the request within three working days, then an appeal can be lodged with the Mental Health Review Tribunal. The appeal can be lodged either verbally or in writing by the patient or their designated carer(s), principal care provider or other person appointed by the patient.

Once an appeal is made the Authorised Medical Officer must give the Tribunal a report which explains the reasons why the patient was not discharged or the reason why the request was not considered in three working days.

Hearing the appeal

As soon as possible after an appeal is lodged the Tribunal will arrange for a hearing to take place at the mental health facility or via telephone or video conference. The Tribunal will consider whether the patient is a “mentally ill person” (as defined in the Act); and whether the person is at risk of serious harm to themselves or others. The Tribunal will also take into account the person’s continuing condition and whether there is a less restrictive form of care available and appropriate.

After hearing the appeal, the Tribunal can discharge the patient, defer the discharge for up to 14 days, dismiss the appeal (and may decide that no further right of appeal may be exercised before the next scheduled review), classify the patient as a voluntary patient, make a Community Treatment Order, or adjourn the hearing.

Is there any limit on the number of times a patient can appeal?

There is no limit on the number of times an involuntary patient may request discharge. However, at an appeal hearing, the Tribunal may decide that no further right of appeal may be exercised before the next scheduled review by the Tribunal.

Mental Health Review Tribunal | PO Box 247 Gladesville NSW 1675
Tel (02) 9816 5955 | Free Call in NSW 1800 815 511 | Fax (02) 9817 4543
Email mhrt@doh.nsw.gov.au | Website www.mhrt.nsw.gov.au