The NSW Mental Health Act:
Everything a registrar needs to know

My tips for your first 3 months on the job

RANZCP Trainee Orientation Program
13 February 2024

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HETI HEALTH EDUCATION & TRAINING

The Royal Australian & New Zealand College of Psychiatrists
New South Wales Branch

THE UNIVERSITY OF SYDNEY

Acknowledgement of Country and Elders

I would like to acknowledge the traditional owners of the land where we meet today.

I pay my respects to their Elders past and present.

It is upon their lands that we meet.

NSW GOVERNMENT

CLINICAL EXCELLENCE COMMISSION

Tips for first 3 months on the job

- Know the Act
- Importance of documentation
- The principle of least restrictive care
- Longitudinal not cross-sectional assessment
- Use-by dates of schedules
- Talk to family, carers
- Presenting to Inquiries or MHRT

Know the Act

- Read it through
- Look it up - http://www.austlii.edu.au/
- Note and discuss application of the Act (consultant's decisions, MH Inquiry and MHRT decisions)

Austlii demonstration

http://www.austlii.edu.au/ → NSW → scroll down to "New South Wales Legislation" and select: "New South Wales Consolidated Acts" → select: "M" → select: "Mental Health Act 2007" then to read a section: click on section number. To return to the index, click on "Table of provisions" (top right under "Navigation")

HETI NSW Mental Health Act (2007) Guide Book

The importance of documentation

- Commonly not done well
- Vital to effectiveness of accurate and comprehensive assessment
- When done well informs higher level decisions (consultant review, treating team understanding, legal aid lawyer, tribunal, appeals)
- Important responsibility and obligation
  - False imprisonment
  - The 12 hour rule
  - Rights
  - Review of MD persons every 24 hours
  - Every patient in a DMHF must have documentation of their status under the MH Act

Documentation - examples

Reported behaviour of the patient:

- Suicidal and went to bridge
- Messaged family he was “sorry”. Brought by police following 2-hour stand-off threatening to jump after climbing into superstructure of Harbour Bridge.

Observations I made of the patient:

- Is paranoid and confused.
- Stated that “people connected with Opus Dei” are following him in the street, his phone is “bugged”. Loosening of associations and loss of goal were evident in his speech.

The principle of least restrictive care

Section 68: a) “the best possible care and treatment in the least restrictive environment”

Sect 12: General Restrictions on Detention of Persons:

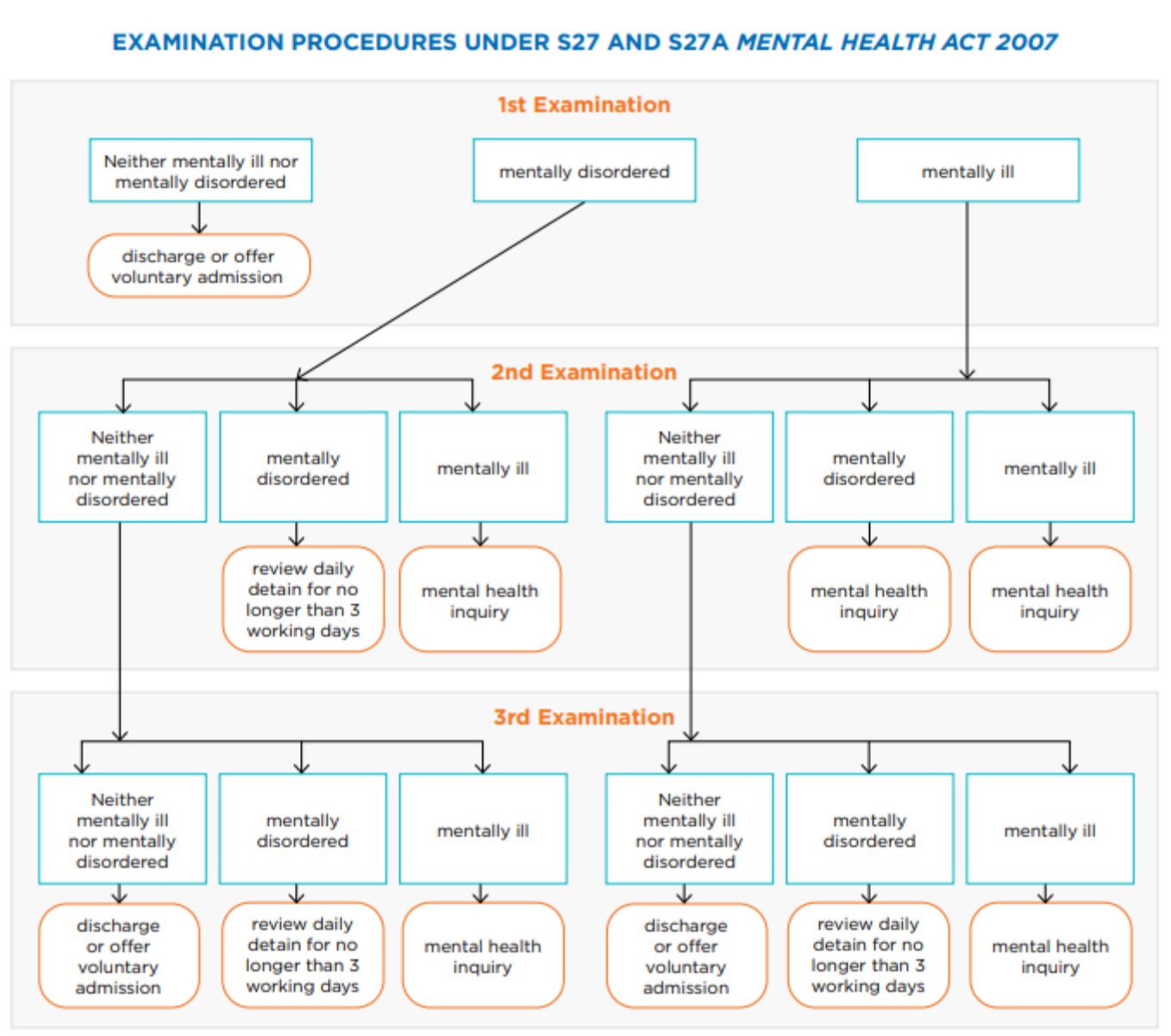
(1) A patient or other person must not be involuntarily admitted to, or detained in or continue to be detained in, a mental health facility unless an authorised medical officer is of the opinion that:

(a) the person is a mentally ill person or a mentally disordered person, and

(b) no other care of a less restrictive kind, that is consistent with safe and effective care, is appropriate and reasonably available to the person.

Sect 40: “An involuntary patient may be classified as a voluntary patient of the mental health facility in which the patient is detained”

An involuntary patient (**S42**) or their carer (**S43**) may make application for discharge,



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Longitudinal not cross-sectional Ax

Section 14

2) “In considering whether a person is a mentally ill person, the continuing condition of the person, including any likely deterioration in the person’s condition and the likely effects of any such deterioration, are to be taken into account.”

“Use by dates” for schedules

A mental health certificate may not be used to admit or detain a person in a facility:

- in the case of a person certified to be a mentally ill person,

more than 5 days after it is given, or

- in the case of a person certified to be a mentally disordered person,

more than one day after it is given.

Detaining a person as mentally disordered

- Only for 3 working days (not counting weekends or public holidays),
- The clock starts at midnight of the day the person is assessed in the second (or third) Form 1 assessment,
- The person must be reassessed every 24 hours and discharged or made voluntary if no longer mentally disordered,
- The period of detention cannot be extended beyond 3 working days: a new schedule and assessment process is required,
- Only 3 periods of mentally disordered per calendar month

Talk to family, carers

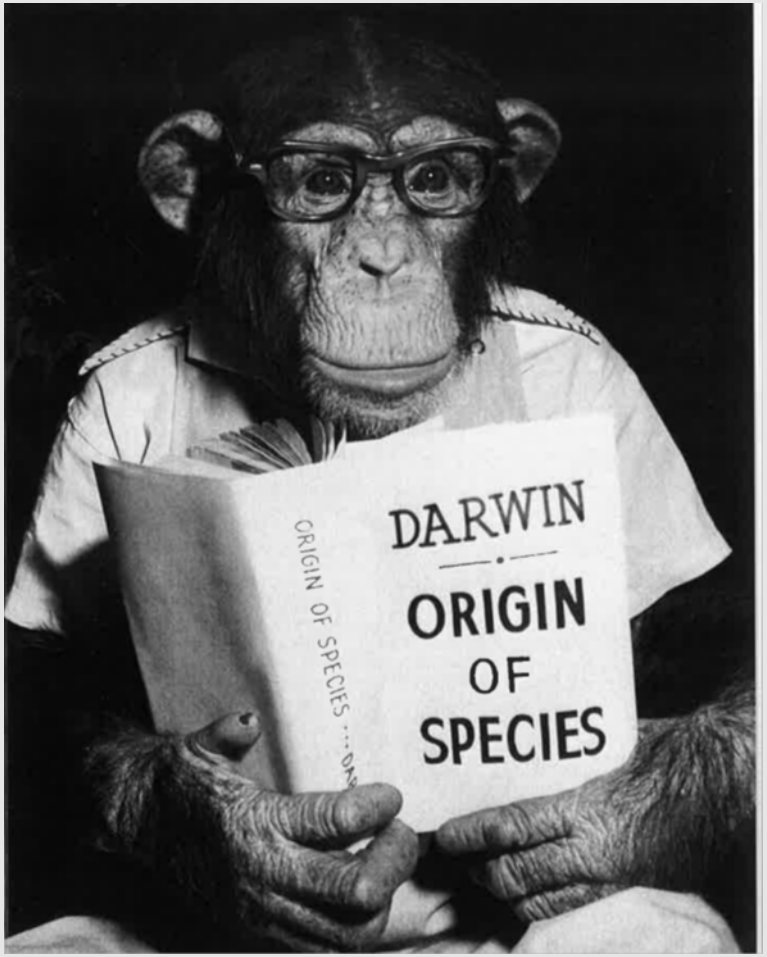
- Corroborative and collateral history
- Understanding the support network
- Building therapeutic network
- Providing education and support
- The MH Act requires the assessing clinician to seek and consider the views of carers, family members, treating health professionals and relevant emergency services personnel, where practicable, when making determinations about a person's potential need for ongoing involuntary treatment (**s72B**). **Such determinations include Form 1 assessments and consideration of discharge**.

- Every step of the way

Tips for presenting to an Inquiry or MHRT

- Be well prepared, your report must be written well before the hearing
- Be accurate
- Be respectful in attitude and language
- Be clear in what you are requesting and why
- Don’t include irrelevant information
- Think about how you want to present sensitive information (you may approach the Member or Tribunal for discussion)

Test your knowledge



Vignette 1 Rachel

Rachel is a 25 year old psychology student who has been brought in by police (S 22) having been found intoxicated in a park. She has been saying that she wants to die because her partner Randy has left her for another woman.

As the authorised medical officer, you assess Rachel to have a history of emotional dysregulation and stormy relationships. Although she does not have clear features of depression she remains distressed and voicing the wish to be dead after you take considerable time to engage with her. You contact her mother and her partner who are concerned about her potential to take an overdose or cut herself.

Shortly after you leave Rachel to write your notes you are informed that she has absconded from the emergency department.

Questions

- Can you write a Form 1 on Rachel?
- What will you write on the Form 1?
- How long will the Mental Health Act documentation on Rachel enable police to apprehend her and return her to hospital?
- Rachel is found and brought back to hospital on the day you wrote your Form 1 (Friday night) and a second examination by a psychiatrist finds her mentally disordered on Monday.
- How long can Rachel be detained as MD?

Vignette 2 Victor

Victor is a 37 year old single man who has been hospitalised with psychotic episodes previously but who has been elusive to follow-up each time he is discharged from hospital.

He presents to the Community Centre on this occasion very paranoid: believing that cars are following him, people are filming him and that he will be murdered by drug dealers from a bikie gang. He has been hearing the voices of these men in the roof space of his flat. He admits to using ‘ice’ on a daily basis for the past fortnight.

He is disorganised and disordered in his speech and suspicious, irritable and hostile in his manner. He says that he has been thinking of “going underground” to escape his tormentors.

Questions

- Would you schedule Victor?
- What would you write on the schedule?
- What additional information should you seek?
- Victor's symptoms settle quickly after admission and recommencement of his medication. He appeals for discharge.
- What options are open to the treating team?

Full slides for reference

The NSW Mental Health Act:
Everything a registrar needs to know

Note: Includes slides on COVID changes to MH Act which have been rescinded- for information.

Address to the medical section of the Royal Society of NSW 15 June 1883

"During the last two years the importance of the certificates and the necessity for filling them in fully have been much more generally recognised, but of those furnished, though affording evidence of the insanity of the patient, and being so far correct as to make their rejection impossible, are still meagre and unsatisfactory documents, giving little assistance to the medical officer of the hospitals in to which the patients are admitted and calculated to add little to the reputation of the writers…."

Frederick Manning Norton MD Inspector-General of the Insane

Irregularities of medical certificates: (1883)

1. Opinions stated instead of symptoms, signs or facts “puerperal mania”
2. General statements: “having delusions”
3. Irrelevant statements
4. Hearsay evidence
5. Defect of form (faulty or incomplete)

The law of false imprisonment

As Justice Kirby states in Ruddock v Taylor (2005) 222 CLR 612 at [140]:

"**Wrongful imprisonment is a tort of strict liability**. Lack of fault, in the sense of absence of bad faith, is irrelevant to the existence of the wrong. This is because the focus of this civil wrong is on the vindication of liberty and reparation to the victim, rather than upon the presence or absence of moral wrongdoing on the part of the defendant. **A plaintiff who proves that his or her imprisonment was caused by the defendant therefore has a prima facie case**. At common law it is the defendant who must then show lawful justification for his or her actions."

NSW Mental Health Act

- The Mental Health Act 2007 (the Act) was amended on 31 August 2015 following a major review of the legislation.
- Mental Health Act 2007 No. 8
- Mental Health Act Regulation 2013

- www.Austlii.edu.au → NSW → Consolidated Acts → M → MENTAL HEALTH ACT
- Tip: to return to the index, click on “Table of provisions”

Terminology

- Declared Mental Health Facility (DMHF) “gazetted”
- Medical Superintendent
- Authorised Medical Officer
- Accredited Person

- Medical Practitioner (e.g. s 27A)

- Mental Health Review Tribunal

Objects of the Act

a. to provide for the care and treatment of, and to promote the recovery of, persons who are mentally ill or mentally disordered, and

b. to facilitate the care and treatment of those persons through community care facilities, and

c. to facilitate the provision of hospital care for those persons on a voluntary basis where appropriate and, in a limited number of situations, on an involuntary basis, and

d. while protecting the civil rights of those persons, to give an opportunity for those persons to have access to appropriate care and, where necessary, to provide for treatment for their own protection or the protection of others, and

e. to facilitate the involvement of those persons, and persons caring for them, in decisions involving appropriate care and treatment.

Principles for care and treatment S 68

a) “the best possible care and treatment in the least restrictive environment”

Voluntary Patients

Voluntary patients

- Every patient (voluntary or involuntary) must now be given a statement of their rights on admission: Schedule 3A “Statement of Rights for Voluntary Patients”
- A voluntary patient must have a signed Voluntary Patient form.

- A voluntary patient in a mental health facility can now be detained for up to two hours to allow an authorised medical officer to carry out an assessment to determine if the person is mentally ill or mentally disordered (s10(3)).
- A new form, Detention of Voluntary Patient has been developed to support this process.

Review of voluntary patients

- Section 9 (1) The Tribunal must review, at least once every 12 months, the case of each voluntary patient who has been receiving care or treatment, or both, whether in a voluntary or involuntary capacity in a mental health facility for a continuous period of more than 12 months.

Involuntary patients

Criteria for detaining a person as mentally ill S14

"A person is a mentally ill person if the person is suffering from mental illness and, owing to that illness, there are reasonable grounds for believing that care, treatment or control of the person is necessary:

- for the person's own protection from **serious harm**, or
- for the protection of others from **serious harm**."

What is a mental illness for the purposes of the Act? (s4)

a condition that seriously impairs, either temporarily or permanently, the mental functioning of a person and is characterised by the presence of any one or more of the following symptoms:

- delusions
- hallucinations
- serious disorder of thought form
- severe disturbance of mood
- sustained or repeated irrational behaviour indicating the presence of one of more of the symptoms mentioned above.

Criteria for detaining a person as mentally ill s14 (2)

"In considering whether a person is a mentally ill person, the continuing condition of the person, including any likely deterioration in the person's condition and the likely effects of any such deterioration, are to be taken into account."

Criteria for detaining a person as mentally disordered (s15)

A mentally disordered person is someone whose behaviour is so irrational that:

- there are reasonable grounds for deciding that the temporary care, treatment or control of the person is necessary to protect them or others from **serious physical harm**.

Criteria for detaining a person as mentally disordered (s15)

- ‘irrational behaviour’ refers to behaviour which a member of the community to which the person belongs would consider concerning and not understandable.

- In determination of whether a person is ‘mentally disordered’ the only additional test for “irrational behaviour” is that temporary care, treatment or control of the person is considered necessary to prevent serious physical harm to the person or others.

Who can write a schedule, cause a person to be examined?

- A registered medical practitioner or accredited person who has personally examined or observed the patient (s19)
- Ambulance officer (s20)
- Police officer (s22)
- Magistrate (s23)
- Magistrate or bail officer (s24 and s33 Mental Health Forensic Provisions Act 1990)
- A medical practitioner or accredited person may examine or observe a person's condition using an audio visual link for the purpose of determining whether to issue a mental health certificate if it is not reasonably practicable for a medical practitioner or accredited person to personally examine or observe the person for that purpose. (s 19A)
- A person may be detained in a declared mental health facility on a written request made to the authorised medical officer by a designated carer, the principal care provider or a relative or friend of the person. (s26)

COVID-19 pandemic provisions

- Local Health Districts (LHDs) and Specialty Health Networks (SHNs) can request the urgent declaration of mental health facilities under section 109 of the Mental Health Act (the Act) in response to COVID-19.
- Temporary emergency response class (TER) of DMHF
  - S27 assessments

COVID-19 pandemic provisions

Use of Audio-Visual Link

Under section 19A, these assessments can be conducted by audio visual link (AVL) by either the medical practitioner or the accredited person, where it is not reasonably practicable to physically examine the person. Before conducting an examination or observation via AVL, the medical practitioner or accredited person must be satisfied that:

- it is not reasonably practicable to physically examine or observe the person. In some cases, the risks of COVID-19 may make a physical examination or observation not reasonably practicable;
- the person can be assessed, using AVL, with sufficient skill and care to be able to properly assess the person.

COVID-19 and associated social distancing measures could be an appropriate reason to utilise AVL in assessing patients. This could be endorsed if the infection control experts at any given facility are recommending the practice.

COVID-19 pandemic provisions

Ordinarily, section 27A does not allow a medical practitioner to examine a patient via AVL if they are located in the same facility. The Act refers to ‘another place’ which is intended to mean outside the hospital in which the person being assessed is located.

To assist mental health facilities in their efforts to enforce infection control measures, a temporary emergency provision has been added to the Mental Health Act 2007 (section 203). This will allow for all assessments under section 27 (whether undertaken by an Accredited Person or a medical practitioner) to be carried out using AVL if necessary due to COVID-19. The requirement for this to be done from ‘another place’ has been removed in section 203, allowing the clinician to be located anywhere when an AVL assessment is undertaken, including in the same declared mental health facility as the patient.

COVID-19 pandemic provisions

Sections 33 and 18(2) and conducting assessments

While the requirements of the examination procedures will generally be followed, there may be times when a person's physical condition or illness requires urgent attention, such as presentation of COVID-19. In these cases the examination procedures may be delayed until the person's physical condition has been stabilised (s33). It should be noted however that if a person is medically capable of being assessed, an examination for their ongoing detention must be completed without delay. Section 33 only suspends the obligations under section 27 while the patient is not medically well enough for those steps to be completed. Once the patient has recovered enough to communicate and be assessed, the examination steps should occur.

Section 18(2) of the Act also allows for the patient to be detained in a non-declared facility where it is necessary to provide medical treatment or care to the person for a condition or illness other than a mental illness or other mental condition.

Police assistance S 19 (3)

- A mental health certificate may contain a police assistance endorsement that police assistance is required if the person giving the certificate is of the opinion that there are serious concerns relating to the safety of the person or other persons if the person is taken to a mental health facility without the assistance of a police officer. The endorsement is to be in the form set out in Part 2 of Schedule 1.

Use by date of S 19 schedules

A mental health certificate may not be used to admit or detain a person in a facility:

- in the case of a person certified to be a mentally ill person,

more than 5 days after it is given, or

- in the case of a person certified to be a mentally disordered person,

more than one day after it is given.

Ambulance officers

- An authorized ambulance officer will have the power to detain, treat and transport a person who appears to be mentally ill or mentally disturbed to a mental health facility S20 (1) and may request police assistance if there are concerns for any person's safety S20 (2).

The Assessment Process

Assessment after a person is scheduled

- The “scheduled person” is taken to a DMHF for assessment (ED, PECC, Inpatient Unit)
- Form 1 completed by an authorised medical officer (s27a) **within 12 hours**,
- Form 1 completed by a second authorised medical officer (psychiatrist) (s27b) as soon as possible

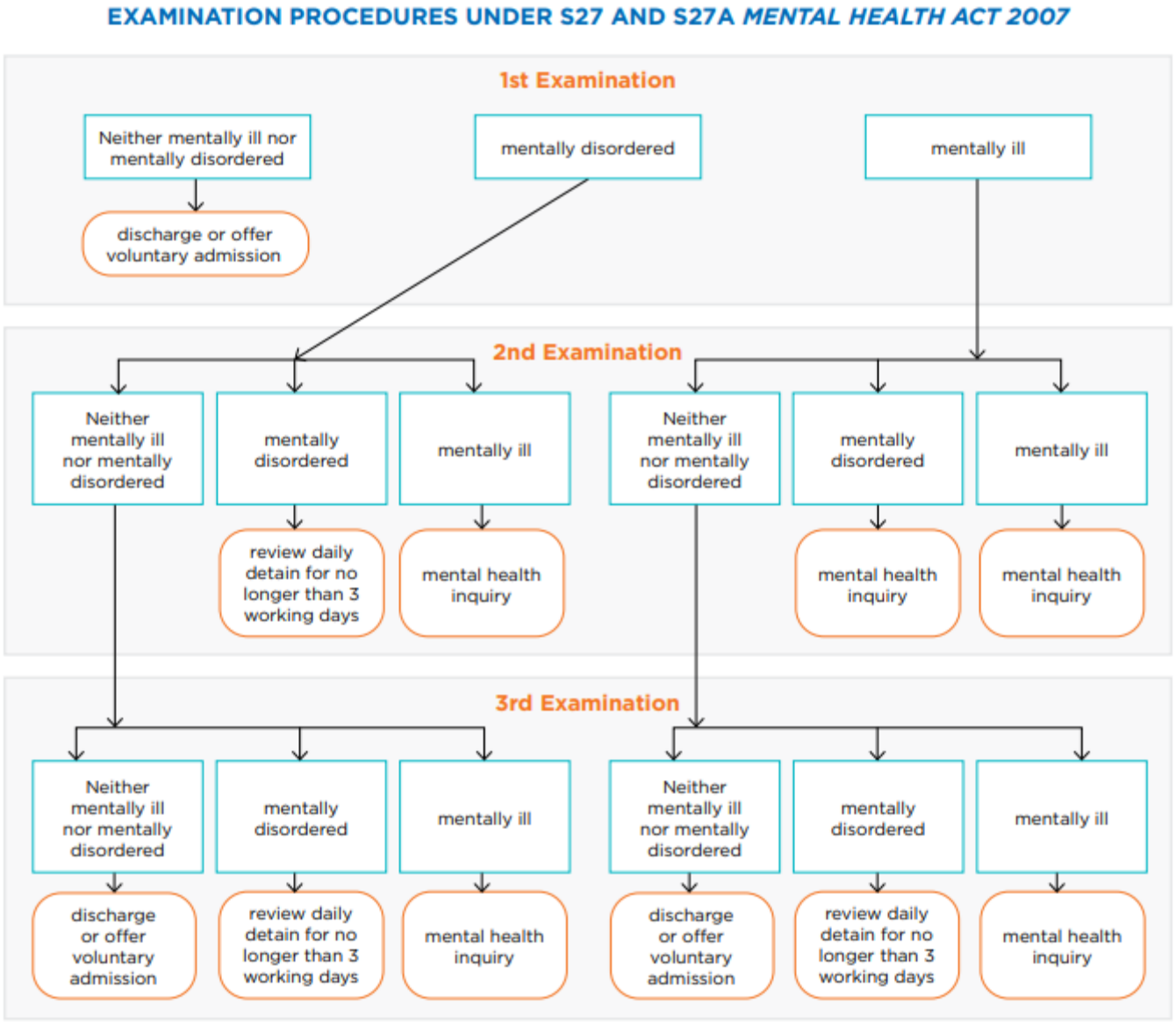
Outcome of the Form 1 assessment

The following outcomes are possible following the first Form 1 assessment:

- The person is neither mentally ill nor mentally disordered: → discharge or admit as a voluntary patient

- The person is assessed to be a mentally ill person, → second Form 1 assessment → detained as an assessable person (mentally ill)

- The person is assessed to be a mentally disordered person, → second Form 1 assessment → detained as a mentally disordered person but must be reviewed every 24 hours



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"the best possible care and treatment in the least restrictive environment"

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Sect 40: "An involuntary patient may be classified as a voluntary patient of the mental health facility in which the patient is detained"

An involuntary patient (S42) or their carer (S43) may make application for discharge,

Detaining a person as mentally disordered

- Only for 3 working days (not counting weekends or public holidays),
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- The person must be reassessed every 24 hours and discharged or made voluntary if no longer mentally disordered,
- The period of detention cannot be extended beyond 3 working days: a new schedule and assessment process is required,
- Only 3 periods of mentally disordered per calendar month

Form 1 assessments (Changes to Act 2015)

- 27A Examinations by medical practitioners or accredited persons for purposes of detention

- (1) If it is not reasonably practicable for an authorised medical officer of a mental health facility or other medical practitioner to personally examine a person……., the person may be examined or observed for that purpose:

(a) by a medical practitioner at another place using an audio visual link, or

(b) in person by an accredited person authorised by the medical superintendent of the mental health facility to do so.

Changes to Form 1 assessments

- Medical practitioners who are not psychiatrists and who are doing a video assessment, and all accredited persons, must seek advice of a psychiatrist (if reasonably practicable to do so). However the psychiatrist is not required to examine the person. (s 27A (4))

- There is a new Form 1 assessment to be used when assessment is done by audio-visual link, or by an accredited person 'Report as to mental state of a detained person – Section 27A'

Rights of involuntary patients

- The Involuntary Patient Statement of Rights has been amended so that involuntary patients have the right to see an official visitor, request discharge at any time, and appeal to the Mental Health Review Tribunal against any refusal to be discharged.

- A person scheduled under the Mental Health Act and detained in a health facility other than a mental health facility for medical treatment has the right to ask to see an official visitor s134A; and their carer also has this right.

- The medical superintendent of a mental health facility must action their request not later than 2 days after being notified s134A

Detaining a person pending apprehension by a police officer

In relation to a person who was brought for assessment by a police officer or referred for assessment by a Magistrate:

- An authorised medical officer can now detain a person pending apprehension by a police officer for up to a maximum of two hours s32 (4) a.

S 80 Transfer of patients to or from mental health facilities

- Transfer of an involuntary patient or detained person to another MHF or a health facility,

- Transfer of patient in a health facility to a DMHF (S 25),

- 80 (3): A transfer of a patient or person to a health facility other than a mental health facility may be made on the grounds that the patient or person requires medical treatment for a condition or illness (other than a mental illness or other mental condition).

Appeals for discharge (s 44)

An involuntary patient or person detained at a mental health facility (the "applicant") who applies to be discharged, or a person who applies for the discharge of the applicant, or a person appointed by the applicant, may appeal to the Tribunal if:

(a) the authorised medical officer refuses the application, or

(b) the authorised medical officer fails to determine the application within 3 working days after it is made.

Family and Carers

Section 72B: involvement of family/carers in assessment

- The Act now requires the assessing clinician to seek and consider the views of carers, family members, treating health professionals and relevant emergency services personnel, where practicable, when making determinations about a person's potential need for ongoing involuntary treatment (s72B). **Such determinations include Form 1 assessments and consideration of discharge.**

Designated carer (s 71) and Principal Care Provider (s 72A)

- The term 'primary carer' in the Mental Health Act has been amended to become '**designated carer**' (s71).

- A new type of carer has been added to the Act, **the 'principal care provider'** (s72A). The principal care provider is the individual who is primarily responsible for providing support or care to a consumer (other than wholly or substantially on a commercial basis). The principal care provider may also be the designated carer of the person.

- Treating clinicians may determine who is the principal care provider of a consumer. (section 72A 2). However a person cannot be the principal care provider if they have been excluded by the consumer under s72 from being given notice or information about the consumer. (section 72A 3).

When should carers be notified?

The designated carer and principal care provider should be notified when the consumer is:

- ❖ detained in a mental health facility (within 24 hours) s75
- ❖ listed for a mental health inquiry s76
- ❖ absent from the facility without permission or fails to return at the end of leave
- ❖ to be transferred to another mental health facility
- ❖ to be discharged
- ❖ admitted or reclassified as a voluntary patient

When should the designated care provider be notified?

The principal care provider should be notified when the person:

- is considered for a community treatment order (CTO) and an application has been made to the Tribunal
- has been on a CTO and that order is to be varied or revoked, or no further CTO is sought
- is considered for electroconvulsive therapy and an application has been made to the Tribunal
- an application is made for consent for surgical operation or special medical treatment s78(g)

Principles for care and treatment S 68

- (h1) every effort that is reasonably practicable should be made to obtain the consent of people with a mental illness or mental disorder when developing treatment plans and recovery plans for their care, to monitor their capacity to consent and to support people who lack that capacity to understand treatment plans and recovery plans,

- (j) the role of carers for people with a mental illness or mental disorder and their rights under this Act to be kept informed, to be involved and to have information provided by them considered, should be given effect.

The Mental Health Review Tribunal

The Mental Health Review Tribunal

- President, Deputy Presidents
- Members:
  - Australian lawyers
  - Psychiatrists
  - Community members
- MH Inquiry (single member)
- MHRT (3 members)
- Annual Report

Proceedings of the Tribunal

- “conducted with as little formality and technicality..”
- “not bound by the rules of evidence but may inform itself of any matter in such manner as it thinks appropriate”
- Proceedings are open to the public, but the Tribunal can make an order restricting or prohibiting publication or broadcasting of evidence or reports
- Determination as to whether the person is a mentally ill person and whether the requested period of involuntary treatment, ECT etc are reasonable.
- May adjourn proceedings for a variety of reasons

Tips for presenting to an Inquiry or MHRT

- Be well prepared, your report must be written well before the hearing
- Be accurate
- Be respectful in attitude and language
- Be clear in what you are requesting and why
- Don’t include irrelevant information
- Think about how you want to present sensitive information (you may approach the Member or Tribunal for discussion)

Community Treatment Orders

Community Treatment Orders (s 53)

The Tribunal may make a community treatment order if:

a) no other care of a less restrictive kind, that is consistent with safe and effective care is available, and that the affected person would benefit from the order as the least restrictive alternative consistent with safe and effective care, and

b) a declared mental health facility has an appropriate treatment plan for the affected person and is capable of implementing it, and

c) if the affected person has been previously diagnosed as suffering from a mental illness, the affected person has a previous history of refusing to accept appropriate treatment.

Community Treatment Orders (s 53)

- The Tribunal may not make a community treatment order at a mental health inquiry unless the Tribunal is of the opinion that the person is a mentally ill person.

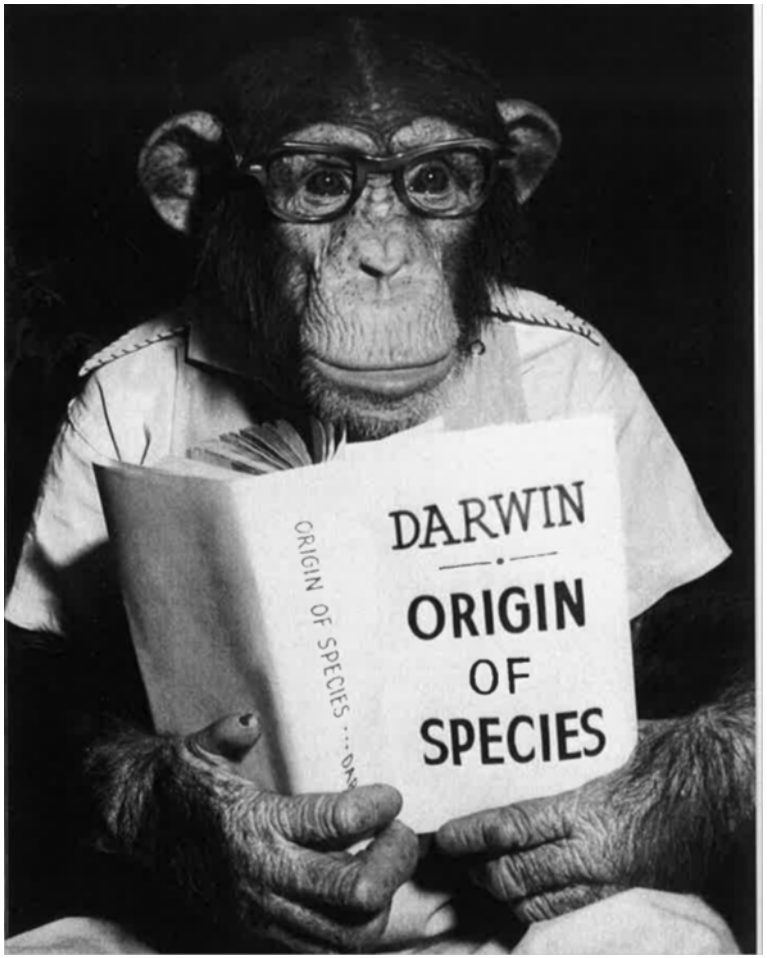
- The Tribunal must not specify a period longer than 12 months as the period for which a community treatment order is in force.

Community Treatment Orders

- The Tribunal now has the authority to make a CTO at an appeal hearing against refusal to discharge a detained person and to defer discharge for up to 14 days (s44(6), s51(6)).

- The treating team is now required to consult with the consumer, and if reasonably practicable to do so, with their designated carer(s) and their principal care provider before revoking a CTO (s66(2)).

Test your knowledge



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Questions

- Would you schedule Victor?
- What would you write on the schedule?
- What additional information should you seek?
- Victor's symptoms settle quickly after admission and recommencement of his medication. He appeals for discharge.
- What options are open to the treating team?

Thank you