

# *Mental Health Act 2016*

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# Mental Health Act 2016

- Commenced on 5 March 2017
- Key areas of change
  - Greater emphasis on capacity
  - Less restrictive way
  - Consent / supported decision-making
  - Recovery model and strengthening patients rights
  - Patient choice regarding legal processes

# Examination Authority

- Replaces the JEO
- Made by MHRT, with clinical advice
- Last resort if there are serious concerns and voluntary examination is not possible
- EA gives a doctor or AMHP accompanied by police, the power to enter a person's home and detain them for examination
- Examination may occur at the person's home or at AMHS

# Emergency Examination Authority

- EEA replaces the EEO
- Provisions under Public Health Act 2005
- Ambulance or police officer believes that there is immediate risk of serious harm due to major disturbance of mental capacity
- Due to an illness, disability, injury or intoxication
- QPS & QAS may transport to hospital
- Detention for 6 hours, plus 6 hours
- A likely outcome may be recommendation for assessment

# Treatment Authority

- TA replaces ITO
- Treatment Criteria:
  - - The person has a mental illness
  - - The person lacks capacity to consent to treatment
  - - Absence of treatment may result in serious harm to the person or others, or the person suffering serious physical or mental deterioration

# Definition of capacity

- Person is capable of understanding:
  - - Has an illness or symptoms
  - - Nature and purpose of treatment
  - - Benefits and risks of treatment and alternatives
  - - Consequences of not receiving treatment
- Capable to make and communicate a decision
- Presumption of capacity, unless proved otherwise
- Capacity training available at:

<https://qcmhl.qld.edu.au/>

# Less restrictive way

- Parental consent
- Supported decision making
- Under an advance health directive
- With consent of attorney or guardian

# Treatment authority process

- Two stages:
- 1. An examination by a doctor or AMHP may result in recommendation for assessment
- 2. Recommendation for assessment may result in treatment authority



# Recommendation for assessment

- May be made if:
- A doctor or AMHP believes that the treatment criteria may apply
- There appears to be no less restrictive way to treat
- An assessment can be with AV technology
- Can be detained under recommendation, for 24 hours (may be extended for up to 72 hours) in an authorised MH Service

# Treatment authority

- An authorised doctor may assess a patient under recommendation for assessment
- TA may be made if:
  - - treatment criteria apply
  - - there is no less restrictive way (AHD, health attorney or guardian)
- Authorised doctor must check records for AHD, attorney/guardian
- TA – community category is the default category

# What is an Advance Health Directive (AHD)?

- An AHD consents to the person's treatment and care at a future time if the person is not able to make decisions for himself or herself
- It may also include the person's views, wishes and preferences about their future treatment and care at a time when the person is not able to make decisions for himself or herself
- The AHD must consent to the treatment that is reasonably necessary to treat the person's mental illness for it to be followed

# How is an AHD made?

- With the treating team
- Signed by a doctor
- Signed by the consumer
- Justice of the Peace, Commissioners for Declarations or lawyer to witness

Important to have it placed on health record

# Further information

- Chief Psychiatrist policies, guidelines, factsheets, forms and other resources available at:

<https://www.health.qld.gov.au/clinical-practice/guidelines-procedures/clinical-staff/mental-health/act>

- Office of the Chief Psychiatrist:

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