

## Overview of the Act

The objects of this Act are to make provision with respect to the care, treatment and control of mentally ill persons and mentally disordered persons and other matters relating to mental health. This new Act results from a review of the legislation initiated by the Government and carried out through extensive consultations with consumers, carers and service providers. It retains many of the significant principles of the Mental Health Act 1990, builds on patient and carer rights and protections and provides for modern models of service provision.



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**NSW HEALTH**

Understanding  
The Key  
Changes in  
The Mental  
Health Act  
2007

A QUICK  
GUIDELINE

Features	Mental Health Act 1990	Mental Health Act 2007
<b>Objects Clauses</b>	Provide assistance in interpretation.	Interpretive objects retained at beginning of Act. New “rights” clauses to support people with mental illness introduced into Chapter 4.
<b>Carers</b>	Not addressed although there are limited provisions for close relatives to apply for discharge, to be notified of a Magistrate’s inquiry, transfer, or proposed surgery.	Concept of “primary carer” introduced. Patient can also nominate a carer who will have rights to information, notice of admission/absconding, capacity to approach an official visitor and to be consulted in discharge planning.
<b>Who can take a person to hospital?</b>	Limited to medical practitioners, accredited persons and police.	Expanded to include Ambulance Officers.
<b>Role of Police</b>	Police can be requested to transport to a hospital and between facilities and to return AWOL involuntary patients.	Police role retained, but Police have discretion to balance this with other competing police/law enforcement obligations.
<b>Transport of Patient</b>	The Act is silent on powers to restrain and sedate during transport and silent on capacity to search.	Establishes clear powers in relation to transport, sedation and searching, reflecting laws in other states.
<b>Admission/Transfer between facilities</b>	The Act has limited provisions for admission through a general hospital or transfer to and from mental health facilities if patients need ongoing medical treatment care.	Allows admission via a general hospital and specific provisions to address medical care and transfers, including where a person is medically unfit to attend a hearing.
<b>Judicial review of detention</b>	Initially by a Magistrate, thereafter by the Mental Health Review Tribunal.	Retained as is but with provision for the President of the MHRT to allocate panels with suitable composition for matters of administrative or non-contested natures.
<b>Compulsory Treatment in the Community</b>	Two types of 6 months orders available: CTOs—issued in hospital and enforceable via re-admission CCOs—issued in the community but with no effective enforcement	CCOs and CTOs have been amalgamated into one order, to be called a CTO. CTOs will run for 12 months, can be issued in the community or in hospital, and have the same enforcement provisions as current CTOs
<b>Psychosurgery</b>	Use restricted & can only be performed after approval of a Psychosurgery Review Board. Definition exempts treatments for Parkinson’s Disease.	Psychosurgery will be prohibited. Definition will now allow treatments to be exempt by regulation, as medical advice suggests there may be medical treatments for other conditions similar to Parkinson’s which may, in the future, need to be exempt from the prohibition. At this stage however, only Parkinson’s Disease will be so prescribed.
<b>Electro Convulsive Therapy</b>	Highly regulated - must be approved by the Mental Health Review Tribunal.	Further restrictions added – now a limit of 12 treatments per approval. For additional treatments the MHRT must give additional and separate approval.
<b>Forensic Patients</b>	6 monthly reviews and recommendations by Mental Health Review Tribunal made to the Executive – final decisions on release vest in the Governor	Provisions retained but moved to the Mental Health (Criminal Procedure) Act pending the outcome of the Forensic Review.
<b>Official Visitors</b>	A panel of medical and community representatives appointed by the Minister to visit facilities and report. Other than that there are no formal functions listed in the Act.	Bill allows appointment of non-medical clinical visitors (psychologists, mental health nurses) and includes statutory functions focussing on advocacy and quality of service. It also allows carers to contact Official Visitors directly.