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# Overview

- The *Mental Health Act 2013* regulates the involuntary assessment and treatment of people with mental illness
- The Act provides for Assessment Orders and Treatment Orders; regulates seclusion, restraint and patient leave; establishes the statutory offices of Chief Civil Psychiatrist and Chief Forensic Psychiatrist; and enables Official Visitors to be appointed
- The Act also establishes the Mental Health Tribunal and provides the Tribunal with a range of powers and functions
- The Act is consumer centred and recognises that competent adults have the right to make their own decisions about assessment and treatment. It requires decisions which infringe a person's rights to be independently oversighted; and provides consumers with specific rights

# The Chief Psychiatrists

- The Act provides for a Chief Civil Psychiatrist, and a Chief Forensic Psychiatrist
- Each Chief Psychiatrist has general responsibility, to the Minister for Health, for ensuring that the Act's objects are met for patients whose assessment and treatment is regulated by the Act
- The Chief Civil Psychiatrist is responsible for ensuring that the Act's objects are met for patients other than forensic patients or people subject to supervision orders; and for the running of approved facilities other than secure mental health units
- The Chief Forensic Psychiatrist is responsible for ensuring that the Act's objects are met for forensic patients and involuntary patients admitted to secure mental health units, and people who are subject to supervision orders; and for the running of secure mental health units

# Independence

- The Chief Civil Psychiatrist and Chief Forensic Psychiatrist are each independent statutory officers appointed by the Governor
- Each Chief Psychiatrist is required to have at least five years' experience in practicing psychiatry
- Neither officer is subject to the direction of the Minister or any other person (including each other) in forming any opinion in clinical matters

# Functions And Powers

- The Chief Psychiatrists' powers and functions are set out in the *Mental Health Act 2013* and related legislation including the *Criminal Justice (Mental Impairment) Act 1999*, the *Sentencing Act 1997* and the *Corrections Act 1997*
- This includes approving forms, issuing Clinical Guidelines and Standing Orders, and approving nurses, medical practitioners and Mental Health Officers for the *Mental Health Act*
- Each Chief Psychiatrist has the power to do anything necessary or convenient in order to perform his or her functions
- Each of the Chief Psychiatrists may delegate their powers and functions, other than the power of delegation, the power to issue, vary or revoke Clinical Guidelines and Standing Orders and powers relating to special psychiatric treatment
- Some powers and functions (restricted professional powers) may only be delegated to a medical practitioner

# Direct intervention

- Each Chief Psychiatrist has the power to intervene directly with regard to the assessment, treatment and care of any patient
- For involuntary patients, the Chief Civil Psychiatrist may intervene directly in the use of seclusion or restraint; decisions about leave; and assessment and treatment generally
- For forensic patients, the Chief Forensic Psychiatrist may intervene directly in the use of seclusion, restraint or force; decisions about leave; decisions about visiting, correspondence and telephone rights; and assessment and treatment generally

# Direct intervention (cont.)

- The Chief Psychiatrists may directly intervene on his or her own motion, on the request of a patient, or on the request of any other person who the Chief Psychiatrist considers has a proper interest in the patient's health, safety or welfare
- However, the relevant Chief Psychiatrist must make inquiries into the matter and be satisfied that intervention is essential to the patient's health, safety or welfare before intervening
- The power may be exercised by giving any person responsible for the patient's treatment and care a notice to discontinue or alter, or observe or carry out, a particular practice, procedure or treatment
- The Chief Psychiatrist may also issue consequential directions for the patient's future assessment, treatment or care



# Clinical Guidelines

- Each Chief Psychiatrist may issue Clinical Guidelines to help controlling authorities, medical practitioners, nurses or other people in the exercise of their responsibilities in respect of treatments, clinical procedures or clinical matters under particular provisions of the Act
- This may extend to guidance in how a provision of the Act should be applied in a practical clinical or forensic setting
- A person exercising responsibilities under the Act must have regard to Clinical Guidelines
- Failure by an individual to have regard to any Guidelines that are in place is not an offence. It may, however, constitute proper grounds for instituting professional or occupational disciplinary action against that person
- This is particularly the case if the failure leads to unfavourable patient outcomes that might otherwise have been avoided or if the person who has failed to have regard to the Guidelines has a history of such disregard

# Standing Orders

- Each Chief Psychiatrist may issue Standing Orders to controlling authorities, medical practitioners, nurses or other people regarding the exercise of their responsibilities in respect of clinical or non-clinical procedures or matters under particular provisions of the Act
- This may extend to directions about how a provision of the Act should be applied in a practical clinical or forensic setting
- A person exercising responsibilities under the Act must comply with Standing Orders
- Failure by an individual to comply with Standing Orders is not an offence but does constitute grounds for instituting professional or occupational disciplinary action against the individual

# Relationship to the Mental Health Tribunal, Official Visitors

- The Chief Psychiatrists, the Mental Health Tribunal and the Principal Official Visitor each have an oversight function under the Act
- The Mental Health Tribunal's role is – broadly speaking – to make decisions about involuntary treatment and to review other actions or decisions which may infringe a person's rights
- The Principal Official Visitor's role is – broadly speaking – to visit facilities and to receive and investigate complaints from people whose assessment, treatment and care is regulated by the Act
- The Act anticipates matters being referred between each body/person to enable the most appropriate action to be taken

# Relationship to the Mental Health Tribunal, Official Visitors (cont.)

- Consistent with this model, the Principal Official Visitor may:
  - Raise any matter of particular concern that comes to the Principal Official Visitor's attention with the relevant Chief Psychiatrist
  - Give a Chief Psychiatrist a private report on any matter related to the responsibilities or activities of Official Visitors
- The Mental Health Tribunal has, in turn, the power to:
  - Review any matter referred to it by a Chief Psychiatrist
  - Refer any matter concerning a review to a Chief Psychiatrist for possible intervention
  - Review the exercise, by a Chief Psychiatrist, of the power of direct intervention

# Reporting

- Each of the Chief Psychiatrists is required to give the Minister for Health an annual report on the Chief Psychiatrists' activities during the previous financial year
- The Minister can ask the Chief Psychiatrists to include particular information in the report
- The report is due to the Minister by 30 September of each year
- The Minister is required to table the report in Parliament and must do so within 10 sitting days after receiving the report

# Useful Resources

- The *Mental Health Act 2013* can be accessed at [Tasmanian Legislation Online](#)
- A range of useful information about the Act is available to read, download and print from [the Mental Health Act website](#) including:
  - Chief Psychiatrist Approved Forms
  - Flowcharts
  - Standing Orders and Clinical Guidelines
  - Online Training Packages and other Education Resources
  - A Clinician's Guide to the *Mental Health Act 2013*
  - Fact Sheets and other Information for Consumers
  - Statements of Rights

# Questions

**Any questions?**