

Meaning of Mental Illness



Chief Civil Psychiatrist Clinical Guideline I

Provisions to Which the Guidelines Relates

Mental Health Act 2013 - sections 4, 17, 25 and 40 (extracted at Appendix I).

Preamble

The meaning of mental illness establishes a legal threshold for the operation of the powers contained in the legislation. The meaning must be met, in addition to other criteria, before the Act may be taken to apply.

The meaning is included in the Act to ensure that the Act is not applied arbitrarily. This is particularly important because of the significant nature of the powers available under the Act to Police Officers, Mental Health Officers, Medical Practitioners and the Mental Health Tribunal if a person is found to have a mental illness within the meaning of mental illness set out in the Act. This includes being taken into protective custody, and being assessed or treated without informed consent.

The meaning is intended to capture mental illnesses for which involuntary treatment is likely to be effective and appropriate taking into account:

- The extent to which particular conditions are likely to impact on an individual's decision making capacity, and
- The extent to which enabling or requiring treatment to be provided involuntarily for particular conditions is likely to unreasonably impact on a person's rights.

The Act does not define mental illness in terms of diagnosis nor does it do so with reference to clinical literature such as the Diagnostic and Statistical Manual of Mental Disorders (DSM). In particular the meaning may be met by a person in the absence of a formal clinical diagnosis.

Rather the Act defines mental illness on the basis of behaviours or symptoms typically displayed or exhibited by a person with a mental illness for which provisions of the Act may be appropriate. In particular it is intended to:

- Include people with temporary conditions, and
- Include people with mental illness that is the result of past alcohol use or drug taking, and
- Include people with a mental illness and another condition, such as acquired brain injury.

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Purpose

This Clinical Guideline is intended to provide practical assistance to controlling authorities, medical practitioners, nurses and other persons in the exercise of responsibilities relating to the meaning of mental illness provided for in the *Mental Health Act 2013*, and related matters.

The Guideline is designed to ensure that the meaning of mental illness is interpreted accurately, consistently and appropriately.

Failure by an individual to comply with this Clinical Guideline may result in professional or occupational disciplinary action being instituted, particularly if the failure leads to unfavourable patient outcomes that might have been avoided had the Guideline been followed; or if there is a history of failure by the individual to comply with this Guideline, or with similar Guidelines in place at the relevant time.

Guideline

I, Professor Kenneth Clifford Kirkby, being and as the Chief Civil Psychiatrist, pursuant to sections 151 and 153 of the *Mental Health Act 2013* and section 22 of the *Acts Interpretation Act 1931* hereby:

1. Revoke all previous directions (clinical guideline) issued under section 151 of the *Mental Health Act 2013* with respect to the meaning of mental illness with effect from 11.59 pm on 30 June 2017; and
2. Issue the following direction (clinical guideline) to controlling authorities (and delegates) and authorised persons with respect to the meaning of mental illness under the *Mental Health Act 2013*, and related matters, with effect from 12.00 am on 1 July 2017.

What Does This Mean In Practice?

Whether or not a person's behaviour falls within the meaning of mental illness contained in the Act is a decision which should be made based on the person's presentation at or proximate to the time that the decision is required to be made. While matters such as the person's history of mental illness, previous diagnoses and reports of behaviour received from others may be of relevance it is the person's behaviour and the decision maker's assessment of this which should be given weight.

While psychosis and serious disorder of mood will generally fall within the meaning of mental illness contained in the Act, anxiety disorders, obsessive-compulsive disorders, trauma related disorders, eating disorders, and dissociative disorders will generally only fall within the meaning of mental illness contained in the Act if it is clinically determined that they constitute serious impairment of thought, mood, volition, perception or cognition.

Factors to be considered in determining whether or not a person's impairment is "serious" include the person's distress and whether the person's response to stressors is culturally approved and contextually appropriate. In determining whether a person's response is culturally approved

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consideration should be given to whether behaviour such as using emotive terms to refer to inanimate objects is a reflection of cultural practice rather than a symptom of mental illness. The person's ability to engage in social, occupational or other significant activities is also of relevance.

Particular care should be taken when identifying mental illness based on conflicts that are primarily between the individual and society. A person who is experiencing a conflict of this kind should only be identified as having a mental illness if the conflict result from dysfunction in the individual resulting from serious impairment of the person's thought, mood, volition, perception or cognition.

Care should be taken to ensure that a clear rationale is provided either in documentation required to be completed under the Act or in the person's clinical notes for a determination that a person has, or does not have, a mental illness within the meaning provided for this term in the Act.

Neurodevelopmental and Neurocognitive Disorders

Neurodevelopmental disorders – including autism spectrum disorders – generally manifest in the developmental stages of life and affect learning or executive functions. Such disorders can also impair a person's social skills and/or intelligence.

Neurocognitive disorders - including dementia, delirium, amnesic and other cognitive disorders – similarly impact on a person's learning or executive functions and may impair social skills and/or intelligence.

Treatments which address the core symptoms of neurodevelopmental and neurocognitive disorders are typically of long term duration and do not usually involve or require emergency or crisis intervention. For this reason these conditions are generally not considered to be mental illnesses within the meaning provided for the Act.

This does not prevent a person with a neurodevelopment or neurocognitive disorder and a co-occurring mental illness which falls within the meaning set out in the Act, from being taken into protective custody or placed on an Assessment or Treatment Order with respect to the mental illness.

Personality Disorders

As with neurodevelopmental and neurocognitive disorders, treatment for personality disorder is generally of a long term nature and does not usually – in and of itself – involve or require emergency or crisis intervention. For this reason personality disorder is not generally considered to be a mental illness for which the provisions of the Act may be utilised.

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This does not prevent a person with a pre-existing personality disorder and a mental illness from being brought within the scope of the Act for assessment or treatment of the mental illness. This also does not prevent a person with a pre-existing personality disorder who is exhibiting behaviours which meet the meaning of mental illness contained within the Act from being taken into protective custody so that the person can be examined by a medical practitioner to determine whether the person has a mental illness as defined.

This requires careful and detailed assessment of the person's observed behaviour and the timeline associated with the onset of the behaviours considered to bring the person within the meaning of mental illness set out in the Act.

Huntington's Disease

Huntington's Disease is particularly prevalent in Tasmania. It is characterised by a combination of irregular, involuntary movements (chorea) and progressive mental deterioration (dementia).

Psychiatric features, chiefly affective and psychotic symptoms become obtrusive in many cases, often early in the person's illness or even preceding the onset of chorea or dementia.

The presence of these symptoms, with or without the presence of chorea or dementia, may bring the person within the meaning of mental illness as provided for in the Act.

Persons Who Are Intoxicated

Alcohol and drug intoxication may influence a person's mental state, may cause them to lose inhibition and may have a depressant effect. Intoxication of this kind may also imitate, or mask, symptoms of an underlying mental or physical disorder; and there are times when intoxication may exacerbate symptoms of a mental illness or lead to a deterioration in the person's behaviour, generating a need for greater - rather than reduced - intervention.

Alcohol or drug intoxication does not in and of itself prevent a person from being assessed, and a request for examination or assessment of a person who is intoxicated - including of persons who are brought into an approved assessment centre in protective custody - may occur even if the person is not yet free from the effects of alcohol and/or drugs.

In particular a person's intoxication should not be used as a basis for refusing or preventing a person's examination or assessment, or for preventing a person from accessing mental health services; and the fact that a person is intoxicated should not be used as a basis for a decision by a Medical Practitioner not to pursue making an Assessment Order or applying for a Treatment Order.

A person's intoxication may, however indicate the need for further assessment when the person is no longer intoxicated, and breath testing may be used as a clinical tool where this is clinically appropriate and where the person consents to being breath tested.

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Breath testing should not however be used to assess whether or not the person should be examined, or assessed to determine whether the Act should be applied.

What If A Person Does Not Meet the Meaning?

A person who has a diagnosed mental illness but who is not considered to meet the definition of mental illness contained in the Act may still be provided with treatment and care, as an inpatient or in the community. This may be with the person's consent, or on the basis of consent given by or under the *Guardianship and Administration Act 1995*.

Consideration should be given to voluntary admission if this is appropriate; alternatively the person should be referred to their nearest appropriate community mental health service. Admission for the purposes of assessing and treating any general health conditions, and/or referral to a community based service for this purpose, should also be considered.

A handwritten signature in black ink, appearing to read 'Ken Kirkby'.

Professor Kenneth Clifford Kirkby

Chief Civil Psychiatrist

Date: 1 July 2017

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Appendix I: Relevant Legislative Provisions

Section 4. Meaning of mental illness

(1) For the purposes of this Act –

(a) a person is taken to have a mental illness if he or she experiences, temporarily, repeatedly or continually –

(i) a serious impairment of thought (which may include delusions); or

(ii) a serious impairment of mood, volition, perception or cognition; and

(b) nothing prevents the serious or permanent physiological, biochemical or psychological effects of alcohol use or drug-taking from being regarded as an indication that a person has a mental illness.

(2) However, under this Act, a person is not to be taken to have a mental illness by reason only of the person's –

(a) current or past expression of, or failure or refusal to express, a particular political opinion or belief; or

(b) current or past expression of, or failure or refusal to express, a particular religious opinion or belief; or

(c) current or past expression of, or failure or refusal to express, a particular philosophy; or

(d) current or past expression of, or failure or refusal to express, a particular sexual preference or orientation; or

(e) current or past engagement in, or failure or refusal to engage in, a particular political or religious activity; or

(f) current or past engagement in a particular sexual activity or sexual promiscuity; or

(g) current or past engagement in illegal conduct; or

(h) current or past engagement in an antisocial activity; or

(i) particular economic or social status; or

(j) membership of a particular cultural or racial group; or

(k) intoxication (however induced); or

(l) intellectual or physical disability; or

(m) acquired brain injury; or

(n) dementia; or

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(o) temporary unconsciousness.

Section 17. Power to take person into protective custody

(1) An MHO or police officer may take a person into protective custody if the MHO or police officer reasonably believes that –

- (a) the person has a mental illness; and
- (b) the person should be examined to see if he or she needs to be assessed against the assessment criteria or the treatment criteria; and
- (c) the person's safety or the safety of other persons is likely to be at risk if the person is not taken into protective custody.

Note Mental illness has the meaning set out in section 4. The assessment and treatment criteria are set out in section 25 and section 40 respectively.

Section 25. Assessment criteria

The assessment criteria are –

- (a) the person has, or appears to have, a mental illness that requires or is likely to require treatment for –
 - (i) the person's health or safety; or
 - (ii) the safety of other persons; and
- (b) the person cannot be properly assessed with regard to the mental illness or the making of a treatment order except under the authority of the assessment order; and
- (c) the person does not have decision-making capacity.

Section 40. Treatment criteria

The treatment criteria in relation to a person are –

- (a) the person has a mental illness; and
- (b) without treatment, the mental illness will, or is likely to, seriously harm –
 - (i) the person's health or safety; or
 - (ii) the safety of other persons; and
- (c) the treatment will be appropriate and effective in terms of the outcomes referred to in section 6(1); and
- (d) the treatment cannot be adequately given except under a treatment order; and
- (e) the person does not have decision-making capacity.