

**Communique**  
**Chief Civil Psychiatrist**  
**Chief Forensic Psychiatrist**

Practice points are designed to supplement information provided in Chief Psychiatrists' Standing Orders and Clinical Guidelines. They will be issued from time to time by the Chief Psychiatrists to assist in clarification of identified operational difficulties concerning the *Mental Health Act 2013*.

**Practice Point 1:**  
**CAPACITY AND TREATMENT – MENTAL HEALTH ACT 2013**

**Introduction**

The following points are made in order to assist clinicians when placing people on Assessment Orders, affirming such Orders and seeking to treat.

Assessment of decision making capacity is a requirement in both the assessment criteria and the treatment criteria. As such, an assessment of decision making capacity should be made when determining if a person meets both assessment criteria and treatment criteria.

- All persons placed on an Assessment Order are involuntary patients under the *Mental Health Act 2013* and require assessment by an Approved Medical Practitioner to confirm that they meet the assessment criteria (i.e. to affirm the Order).
- A person to whom an Assessment Order applies may be treated using Urgent Circumstances Treatment where clinically necessary, even prior to the Assessment Order being affirmed.
- Should the person meet the assessment criteria, and the Assessment Order is affirmed, then, at that time the person must be considered to lack decision making capacity in respect of assessment for their mental illness (as the lack of capacity is one of the necessary assessment criteria for an Assessment Order).
- Once an Assessment Order has been affirmed, application should be made to the Mental Health Tribunal as soon as practicable for a Treatment Order and, where necessary, an Interim Treatment Order. Ideally, capacity to 'consent to treatment' should once again be assessed at this time (if not already assessed in conjunction with capacity to 'consent to assessment').
- An involuntary patient (including a patient who is subject to an Assessment Order) may only be treated if by the Mental Health Tribunal or as Urgent Circumstances Treatment (if the particular circumstances necessitate this).
- Should circumstance preclude the issue of either a Treatment Order or an Interim Treatment Order in a timely fashion, people under an Assessment Order which has been affirmed, may be treated for their mental illness under the authority of Urgent Circumstances Treatment.

- Generally speaking, it is almost always the case that a person who lacks ‘capacity’ in respect of assessment for mental illness will also lack ‘capacity’ for treatment of the mental illness. Necessary medication should then be administered under the authority of Urgent Circumstances or by way of a Treatment Order or Interim Treatment Order. This is not for the purposes of chemical restraint but to ameliorate symptoms of the person’s mental illness.
- In the case of a person already prescribed and taking medication for a mental illness and agreeing to continue that medication in the same or lesser dosage, careful thought must be given to whether or not they have the capacity to adequately understand that decision. In almost all cases, if they lack capacity for either assessment or alteration of their usual medication, they will lack capacity to give informed consent to the administration of their usual medication. Medication should then be administered under the authority of Urgent Circumstances Treatment or by way of a Treatment Order or Interim Treatment Order.
- If it is considered that, while lacking capacity to either give informed consent to assessment or to an alteration in treatment, the person has capacity to take their usual medications, these can be administered. Clinicians should carefully record the reasons for this decision and the judgement that they lack capacity for assessment or an alteration in treatment, but possess capacity with respect to normal medications.

### Questions?

If you have any questions about this Practice Point you can contact the Clinical Director in your area, or the Chief Civil or Chief Forensic Psychiatrist.

North: 6336 2185

North West: 6421 7663

South: 6230 7719

Chief Psychiatrists (statewide): 6230 7780