SECTION: 14

Legislative Requirements

In this section you will…

- *Gain an overview of the different legislation that has a direct impact on the implementation and delivery of the Tasmanian Opioid Pharmacotherapy Policy and Clinical Practice Standards; and*
- *Be provided with a brief summary of the key pieces of legislation, their implications for clinical service delivery and links to further information.*

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14 Legislative requirements

There are a number of important pieces of legislation that have a direct impact on the implementation and delivery of the Tasmanian Opioid Pharmacotherapy Policy and Clinical Practice Standards. In general these relate to: the regulation and prescribing of opioid pharmacotherapy; the provision of involuntary and emergency treatment; managing harm to self and others; public safety; individual capacity; and privacy and confidentiality. The following section provides a brief summary of these key pieces of legislation, their implications for clinical service delivery and links to further information.

14.1 Poisons Act 1971

The prescription of opioids in Tasmania is subject to regulatory requirements under the *Tasmanian Poisons Act 1971*, which includes the prescribing of opioid medications and other drugs of dependence. Dispensing pharmacists are also required to comply with Tasmanian regulations in relation to opioids. This Act specifies the administrative guidelines for the prescribing and dispensing of opioid pharmacotherapy.

The prescription of opioids in Tasmania is subject to regulatory requirements under the Tasmanian Poisons Act 1971.

There are restrictions in relation to the dispensing and supply of certain scheduled substances that have been prescribed by a medical practitioner in other jurisdictions (states and territories). These restrictions apply to Schedule 8 (narcotic) substances and Declared Restricted Substances (S4D's). All opioid pharmacotherapy medications fall within Schedule 8; therefore, these restrictions apply to all prescriptions for buprenorphine and methadone.

Prior to commencing treatment, the authorised prescriber must obtain authority for each client from the Pharmaceutical Services Branch (PSB) (Section 59E of the *Poisons Act, 1971*). An application, Authority to Prescribe Opioid Pharmacotherapies form (see Appendix) must be forwarded to the PSB for approval to prescribe opioid pharmacotherapy. This authority issued to the practitioner is valid only for that client, and cannot be transferred.

Prior to commencing opioid pharmacotherapy treatment, the authorised prescriber must obtain authority from the Pharmaceutical Services Branch.

If the client leaves treatment or the prescriber ceases to treat the client for any reason, the prescriber is required to cancel the authorisation. This is done by sending a Notification of Termination of Methadone/Buprenorphine Treatment form (see Appendix X) to the PSB.

The Act prevents the issuing of an authority for that client from another prescriber until the termination notification is received. These procedures ensure that a client does not receive pharmacotherapy from two prescribers concurrently.

All clinicians involved in the delivery of opioid pharmacotherapy in Tasmania must be familiar with this Act, and in particular, with Sect 59E: Authority for making drugs available to certain clients.

14.2 Alcohol and Drug Dependence Act 1968

The *Alcohol and Drug Dependency Act 1968* (ADDA) makes provision with respect to the treatment and control of persons suffering from alcohol or other drug dependency. However, contrary to its objectives, the ADDA does not expressly confer the power to compulsorily treat an individual. Therefore, it is used primarily for compulsory detention.

The Alcohol and Drug Dependency Act 1968 does not confer the power to compulsorily treat an individual.

The Act is primarily used for compulsory detention.

Under the ADDA, a person may be detained in a treatment centre pursuant to an admission application. The ADDA distinguishes between admission applications initiated by a client (called a 'personal application') and applications made by a relative or welfare officer (called an 'involuntary application').

An application for discharge can be made to the Alcohol and Drug Dependency Tribunal. The Tribunal has authority to hear and determine applications by clients or a relative of the client. It consists of five members, three of whom are medical practitioners, and two of whom are persons with suitable qualifications or experience.

The ADDA is currently under review because it contradicts contemporary alcohol and other drugs research, literature and practice. Numerous amendments have been made to the ADDA since it was first enacted in 1968 which have rendered it confusing and difficult to apply. The definitions contained within the ADDA are also outdated and therefore it is seldom used.

14.3 Mental Health Act 1996

Clients with an alcohol and drug dependency and a mental illness can be involuntarily detained for the purposes of treatment pursuant to the *Mental Health Act 1996* (MHA). As the prevalence of individuals with comorbid mental health and substance use issues is relatively high, the nature of risk to self or others often becomes an issue for the alcohol and other drug sector. These risks are often dealt with through the application of the MHA. Where an individual may be at extreme risk to themselves or others (expressing suicidal or homicidal intent related to their mental illness), the MHA and the facilities that support this legislation are best placed to manage and monitor the identified risk to a person and others.

The MHA currently does not provide authority for the person to be detained for treatment of their alcohol or drug dependence. Therefore, its application to the entire client group is limited.

Under the Mental Health Act 1996, clients with an alcohol and drug dependency and a mental illness can be involuntarily detained for the purposes of treatment.

The Act does not provide authority for a person to be detained for the purpose of treating their alcohol or drug dependency.

A review of the MHA 1996 formally commenced in October 2006, and a new Mental Health Act is currently being developed as a result of feedback obtained through the review's consultation phase. The original Act made provision for the care and treatment of people with mental illness and for safeguarding their rights. Most people with mental illness can and do seek out treatment for their condition. However, this legislation is concerned with the small number of persons who cannot, or who do not, seek out treatment. The new Act will be based on the current MHA, but will have a focus on treatment as opposed to the current focus on detention.

14.4 Misuse of Drugs Act 2001

The purpose of this Act is to prevent and manage the misuse of drugs. Part 3, Minor Offences, has a number of divisions that have application to the opioid pharmacotherapy program:

- Division 3 Possession, use and administration of a controlled drug
- Division 4 Sale and supply of a controlled drug
- Division 5 Miscellaneous (Sect 28 Unlawful conduct in relation to prescriptions).

Under these provisions a person must not:

(a) possess, use or administer a controlled drug to another person;

(b) sell or supply a controlled drug to another person;

(c) forge a prescription;

(d) possess a prescription knowing it to have been forged or unlawfully altered; or

(e) utter a prescription knowing it to have been forged or unlawfully altered.

This legislation has implications for diversion; trading and selling of takeaway doses and also for the theft, forgery, changing or tampering of prescriptions (see Section 12 Managing Complex Presentations).

While there are no mandatory reporting provisions in this Act, health professionals have a duty of care to consider the potential risks for individuals and the community. If there is

clear evidence of real and imminent risk to the individual or to the community as a result of these activities, a report should be made to Tasmania Police.

Clinicians are strongly encouraged to seek advice and guidance in relation to these complex clinical matters. Within the ADS, these complex clinical issues should be reviewed by the multidisciplinary team with the involvement of senior managers and where appropriate the Clinical Director, ADS. Private practitioners involved in the delivery of the Tasmanian OPP are also encouraged to contact an Addiction Specialist within the ADS for support and advice.

14.5 Guardianship Administration Act 1995

The *Guardianship Administration Act 1995* (GAA) is a substitute decision-making framework for persons with a disability. The GAA established the Guardianship and Administration Board (GAB), deals with financial and lifestyle matters for people with disabilities that affect their ability to make decisions. The functions of the Board are extensive and include powers in relation to: guardianship; enduring guardianship; administration; enduring powers of attorney; emergency situations; consent to medical or dental treatment and statutory wills.

The Guardianship Administration Act 1995 is a substitute decision-making framework for persons with a disability.

The Act is not applicable to a person who lacks capacity to make decisions because of alcohol or drug dependence only.

Currently, the provisions contained in Part 7 of the GAA (Administration Orders) are not applicable to a person who lacks the capacity to make decisions for him or herself because of an alcohol or drug dependency, unless there is also evidence of a disability such as acquired brain injury, dementia or depression. However, there are instances where the GAA may be applicable for some individuals with alcohol and other drug use issues related to acute physical and mental health disabilities (i.e., liver disease, diabetes, cardiovascular problems and cognitive impairment).

There are provisions within the GAA for such issues to be addressed via an Emergency Guardianship Application. Under both an emergency application and a full application, the GAB may appoint a guardian who may have the power to make decisions in relation to alcohol and drug treatment (Section 40 & Part 6 of the GAA).

14.6 Children, Young Persons and Their Families Act 1997

All health professionals in Tasmania have mandatory reporting obligations under Section 14: Informing of concern about abuse or neglect or certain behaviour, Part 3 of the *Children, Young Persons and Their Families Act 1997*. All registered health professionals are 'prescribed persons' and therefore should be familiar with this Act and of their mandatory obligation to report information relating to child abuse and neglect.

All health professionals in Tasmania have mandatory reporting obligations regarding concerns of abuse or neglect of children.

In relation to child protection, 'interventions with AOD using parents involves balancing child protection with interventions to improve parents' lives' (Marsh, Dale & Willis, 2007, p17). During the assessment process, clinicians should aim to collect information to:

- Enhance the protection and care for children by accurately assessing and managing the potential risk of harm to a child in their client's care; and
- Improve the quality of life for parents by working in a multi-systemic manner with the parents to address other areas of difficulty that impact on their parenting capacities.

A routine element of clinical assessment should include inquiries regarding the child/ren's welfare and overall family wellbeing. These issues are best raised in the context of a supportive therapeutic relationship. If there are indicators of child protection concerns, the clinician has an obligation to carefully consider these and to consult with Child Protection Services (1300 737 639). Health practitioners also have an obligation to implement appropriate management strategies if there is evidence of a child at risk.

14.7 Family Violence Act 2004

The *Family Violence Act 2004* provides for the safety, psychological wellbeing and interests of people affected by family violence. In this Act 'family violence' includes any of the following types of conduct committed by a person (directly or indirectly,) against that person's spouse or partner:

i. assault (including sexual assault);

ii. threats, coercion, intimidation or verbal abuse;

iii. abduction; and

iv. stalking.

This includes attempting or threatening to commit such conduct and may also encompass any of the following:

i. economic abuse;

ii. emotional abuse or intimidation; and

iii. contravening an external Family Violence Order, an interim Family Violence Order, a Family Violence Order or a Police Family Violence Order.

The Family Violence Act 2004 provides for the safety, psychological wellbeing and interests of people affected by family violence.

Individuals with substance use issues often have complex social circumstances. Alcohol and other drug use can have a significant impact on interpersonal and family relationships. Trauma and family of origin abuse and neglect are often present in the lives of individuals with problematic substance use issues. For this reason clinicians involved in the delivery of the Tasmanian OPP should regularly review and assess the social circumstances of clients and give consideration to the safety and wellbeing of both the individual and the family (See Section 5).

All health professionals in Tasmania have a duty or obligation to report incidences of family violence. Tasmanian family violence legislation contains a mandatory reporting provision (Section 38), but the relevant section has not commenced. This means that reporting under this Act is not mandatory and there are currently no penalties applied for failure to comply. However, health professionals are encouraged to report these incidences to the Family Violence Referral and Response Line on 131 444.

The Act does provide some protections for those sharing information in relation to family violence and these are contained in Sect 39 (Protection from liability for voluntary or mandatory information).

A person who informs a police officer (through mandatory or voluntary reporting) that he or she believes, reasonably suspects or knows that family violence has occurred or is likely to occur, or who provides any further information to a police officer in respect of such belief, suspicion or knowledge is protected from liability by virtue of Section 39. A person who provides this information:

(a) cannot, by virtue of doing so, be held to have breached any code of professional etiquette or ethics, or to have departed from any accepted form of professional conduct; and

(b) insofar as he or she has acted in good faith, incurs no civil or criminal liability in respect of informing a police officer; or the provision of further information.

It is important to note that when children and young people are present in a family where an incident of family violence has been reported, an automatic notification is made under the *Children and Young Persons Act 1997*. Family violence is considered to be a form of child abuse. There is clear evidence that children and young people, who live with and experience family violence, can develop trauma similar to that of children and young people who grow up in a war zone or experiencing a natural disaster (Anthony 1988).

14.8 Personal Information Protection Act 2004

The Personal Information Protection (PIP) Act regulates the collection, maintenance, use, correction and disclosure of personal information relating to individuals. Health professionals should always strive to maintain client confidentiality, however, there are situations when workers will be required to break a client's confidentiality (i.e. conditions of exception).

The PIP Act 2004 regulates the collection, maintenance, use, correction and disclosure of personal information relating to individuals.

Schedule 1 PIP Principles (Sections 6, 9, 10, 11, and 16) provide information about the Use and Disclosure of information including the circumstances under which information may be disclosed without seeking the consent of the individual. There are a number of circumstances in which this may be deemed necessary, however, there are a several areas that are of particular interest to clinicians involved in the delivery of the Tasmanian OPP. It is important clinicians are aware that as personal information custodians, they are not to disclose information about an individual for a purpose other than what it was intended, unless:

(d) the personal information custodian reasonably believes that the use or disclosure is necessary to lessen or prevent-

i. a serious threat to an individual's life, health, safety or welfare; or

ii. a serious threat to public health or public safety.

(e) the personal information custodian has reason to suspect that unlawful activity has been, is being, or may be engaged in, and uses or discloses the personal information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities; or

(f) the use or disclosure is required or authorised by or under law.

Health professionals have an obligation to ensure the confidentiality of personal information provided by clients. The PIP Act guides and supports practitioners in making sound judgments about the timely and appropriate disclosure of information without consent. This Act supports the health practitioner to execute their duty of care by setting out the provisions under which relevant information can be made available, to ensure the safe and appropriate treatment of the individual and public safety.

14.9 Right to Information Act 2010

The Review of the Freedom of Information (FOI) Act 1991 led to the development of the *Right to Information Act 2010*, which replaced the FOI Act on its commencement in July 2010.

The *Right to Information Act 2010* (RTI) provides members of the public the right to obtain information contained in the records of the Government and public authorities.

The Right to Information Act 2010 provides members of the public the right to obtain information contained in the records of the government and public authorities.

The purpose of the new Act is to also:

- mandate greater proactive release of information by the Government;
- spell out the factors to be considered when applying the overarching public interest test;
- create clear timelines for processing applications, if the information is not readily available; and
- increase the powers of the Ombudsman for external review and monitoring.

14.10 Firearms Act 1996

The possession of firearms in Tasmania is governed by the *Firearms Act 1996*. This Act details the legal and license requirements associated with the possession, use, safe keeping, and disposal of firearms and the purchase and dealing in firearms. An application must be lodged to obtain a permit to possess a firearm in the state of Tasmania. There are certain restrictions associated with the granting of a license to possess a firearm: these are described in Division 5 (Applications), Sect 29 (General Restrictions on Granting License).

There are three sections of the Act that have application to health practitioners working in the alcohol and other drug sector. These relate to the restrictions associated with:

- the handling of firearms while under the influence of drugs;
- the disclosure of information relating to the safety of an individual to possess or use a firearm; and
- restrictions that may prohibit an individual from possessing or using a firearm.

All health practitioners have a responsibility to ensure the safety of their clients, their families and the community. Health professionals should be aware of their responsibilities relating to the disclosure of information relating to the possession and use of firearms where there is the potential risk for harm to the individual and the community.

Section 120 of the Act makes specific reference to the use of alcohol and other drugs and the restrictions relating to the use and handling of a firearm. It specifies that a person must not handle or use a firearm while the person is under the influence of alcohol or any other drug.

The Firearms Act 1996 specifies that a person must not handle or use a firearm while they are under the influence of alcohol or any other drug.

Section 130 (1) & (2) relates to firearm prohibition orders. Under this section the:

> *Commissioner may, by order, prohibit the person from possessing or using a firearm if, in the Commissioner's opinion, the person is unfit, in the public interest, to possess or use a firearm. A firearms prohibition order takes effect on the day on which it is served and is in force until it is revoked.*

Under the Act a prescribed person must disclose certain information (section 148). In this section, prescribed persons can include a medical practitioner, a registered nurse or a person in the psychology profession.

(1) A prescribed person is to inform the Commissioner, by notice in writing, if he or she reasonably believes that_

(a) a client or client is likely to possess or use a firearm; and

(b) such possession or use would be unsafe, for the client or client or another person. This may be due to the client's or client's mental or physical condition or because the client or client would be a threat to public safety.

A prescribed person is to inform the commissioner if a client is likely to possess or use a firearm, and that this would be unsafe for the client or another person.

If a clinician has concerns regarding a client's ability to safely possess and/or use a firearm, a Section 148 Notice is to be completed. This forms requests the clinician to specify the client's name and address and the reason for the opinion held in relation to the client. A failure to act in accordance with the provisions of the Firearms Act is punishable by either a monetary penalty or for a term of imprisonment not exceeding 2 years or in some cases both.

14.11 Vehicle and Traffic Act 1999

As discussed in Section 4, the provision of opioid pharmacotherapy has implications for an individual's capacity to drive and operate machinery. This is particularly significant during induction onto opioid pharmacotherapy. In addition, some of the risks associated with substance use and dependence include motor vehicle, domestic, and workplace accidents.

Ability to engage in these activities is unlikely to be affected once the client is stabilised in treatment or stabilised after a dose increase. If a client is unfit to drive due to an impaired mental state or medical condition, he or she has a responsibility to cease driving and notify the licensing authority in Tasmania. However, this often does not occur.

Health professionals involved in the delivery of the Tasmanian OPP have a duty of care to the client and the community relating to fitness to drive. Therefore, if a clinician observes that a client is unfit to drive due to a known impairment and is, subsequently, a risk to road safety, they have a duty to report this to the Registrar of Motor Vehicles. This is consistent with Part 8, Section 63 (Report of unfit driver or defective vehicle) of the Vehicle and Traffic Act 1999. Whilst notification under this Act is not mandatory, there is an obligation or duty to report possible risks to road safety that may be a consequence of an unfit driver. The Act has the following provisions in place in relation to the individual who has made the report:

(1) A person incurs no civil or criminal liability for reporting to the Registrar, in good faith, that another person may be unfit to drive a motor vehicle or that a motor vehicle or a trailer may be defective; and

(2) A person incurs no civil or criminal liability for reporting to the Registrar, in good faith-

(a) the results of a test or examination carried out under this Act; or

(b) an opinion formed as a result of conducting such a test or examination.

Tasmanian OPP clinicians have a duty of care to the client and community relating to fitness to drive.

If a clinician observes that a client is unfit to drive, they have a duty to report this to the registrar.

14.12 Health Practitioners Regulation National Law (Tasmania) Act 2010

At the time of writing, a process was underway to achieve a single national regulatory framework for the registration and accreditation of health professionals in Australia. This scheme allows health professionals to practice in all jurisdictions across Australia without the need to meet additional registration and accreditation conditions for each state. The Health Practitioners Regulation National Law enables Tasmania to participate in the National Registration and Accreditation Scheme for Health Professionals. This scheme establishes a regulatory framework across all aspects of professional practice including registration, accreditation, complaints and conduct, health and performance, privacy and information sharing.

This legislation aims to ensure public safety through a number of mechanisms including:

- mandatory criminal and identity checks; and
- mandatory reporting by health practitioners and employers of impaired practitioners or practitioners who may have engaged in inappropriate conduct.

Of relevance to those involved in the provision of OPP is the mandatory requirement to report when there is evidence that a health practitioner may be practising in a manner that may put clients at risk of harm, or when they may be practising under the influence of drugs and alcohol.

When a health professional is receiving treatment for an alcohol and other drug use issue (such as opioid dependence) the treating health professional has an obligation to thoroughly assess and monitor the individual. This includes assessing the potential impact of the client's substance use condition on their capacity to fulfil their role as a health professional. Where there is evidence of risk to public safety, the health practitioner must report this to the regulatory authority.

Health professionals are strongly encouraged to contact the Australian Health Practitioner Regulation Agency (1300 419 495) to seek advice and guidance in relation to these issues. Within the Alcohol and Drug Service, these complex clinical issues should be reviewed by the multidisciplinary team with the involvement of senior managers and where appropriate the Clinical Director, Alcohol and Drug Service. Private practitioners involved in the delivery of the Tasmanian OPP are also encouraged to contact an Addiction Specialist within the ADS for support and advice.

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