



mental health coordinating council

NSW Mental Health Rights Manual *3rd Edition*

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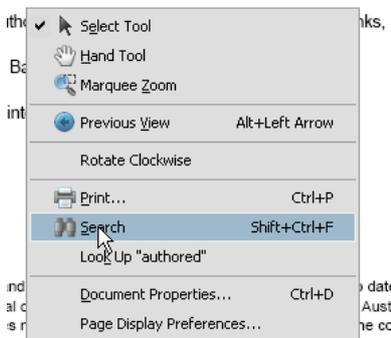
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Home

The Mental Health Rights Manual: A Consumer Guide to the Legal and Human Rights of People with Mental Illness in NSW (3rd Edition) 2011

Every person with a mental illness should have the right to exercise all civil, political, economic, social and cultural rights as recognised in the UN Universal Declaration of Human Rights.

The Mental Health Coordinating Council presents its online NSW Mental Health Rights Manual (3rd Edition) which extensively builds on the 2004 online edition and the original manual published in 1995. By incorporating the latest legislative reform and government directives, the new edition ensures ongoing access to current legal information for anyone in contact with the mental health sector.

Written in plain language, the manual is an invaluable readily accessible resource, bringing together vital information crucial to anyone having to navigate the mental health system, enabling them to become acquainted with their rights, the legal and service system, and access support and guidance.

Disclaimer

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Foreword

The *NSW Mental Health Rights Manual* (3rd edition) is a greatly expanded 'new look' online guide to the legal and human rights for people with a mental illness in NSW. This edition incorporates the latest legislative reform and government directives, and will ensure ongoing access to current legal information for anyone in contact with the mental health and criminal justice systems. Written in plain language, this edition is an invaluable readily accessible resource, bringing together vital information crucial to anyone who has to navigate the complex terrain, enabling them to become acquainted with their rights, the legal and service systems, find out where they can access support, information and guidance for themselves or those that they wish to assist.

Whilst there is a plethora of specific information available, there is no other resource that covers a broad spectrum of topics as well as explaining the interface between the legal and service systems as they interact in NSW. The 3rd edition speaks to a diverse mental health community, and has been developed specifically for people with a mental illness, their carers and significant others; and non-legal community service providers in NSW.

The partnership between the Mental Health Coordinating Council (MHCC) and the Public Interest Advocacy Centre (PIAC) in producing this Manual has been a very positive and fruitful one; both organisations bringing distinct perspectives and expertise to the project. Consultations with consumers and carers have provided invaluable direction for the Manual's contents as has the engagement of advocates and key organisations operating in the mental health and legal sectors. Keeping the Manual user-friendly has been a particular focus of all involved ensuring as much as possible that it is accessible as well as comprehensive.

I commend the *NSW Mental Health Rights Manual* to you on behalf of MHCC.



Jenna Bateman
Chief Executive Officer
Mental Health Coordinating Council

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Edited by Robin Banks, **PIAC** (until September, 2010) and Corinne Henderson, **MHCC**

Prepared as an internet resource by **Aventia Consulting**

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Disclaimer: any opinions expressed in this publication are those of the authors and do not necessarily reflect the views of the Law and Justice Foundation's Board of Governors.

The **Mental Health Coordinating Council** and the **Public Interest Advocacy Centre** particularly thank consumers and carers who generously consented to be interviewed about their experiences in engaging in the mental health and legal systems. They provided rich personal evidence and information useful to people with mental illness and carers in a diversity of contexts.

The Mental Health Coordinating Council and the Public Interest Advocacy Centre gratefully thank members of the Mental Health Rights Manual Advisory Group, who generously gave their time over 18 months to attend meetings and contribute towards the development of this revised and largely reconstructed online manual:

- Robin Banks, Public Interest Advocacy Centre*
- Peter Bazzana, NSW Institute of Psychiatry
- Carol Berry, NSW Council for Intellectual Disability
- Elizabeth Barry, Health Care Complaints Commission
- Sharny Chalmers, Public Interest Advocacy Centre*
- Cherie Carlton, NSW Institute of Psychiatry
- Esther Cho, NSW Guardianship Tribunal
- Peter Dodd, Public Interest Advocacy Centre
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- Rebecca Doyle, NSW Consumer Advisory Group – Mental Health Inc
- Jonathan Harms, NSW Australian Relatives and Friends of the Mentally Ill
- Corinne Henderson, Mental Health Coordinating Council
- Justin Liebmann, Consumer
- Elizabeth Meyer, NSW Disability Discrimination Legal Centre*
- Leslee Murphy, Office of the NSW Trustee and Guardian
- Ka Ki Ng, Public Interest Advocacy Group*
- Karen Oakley, NSW Consumer Advisory Group – Mental Health Inc*
- Francis Rush, NSW Office of the Public Guardian
- Therese Sands, People with Disability Australia
- Jo Shulman, NSW Disability Discrimination Legal Centre
- Associate Professor Meg Smith, University Western Sydney*
- Pam Verrall, Mental Health Association NSW*

* **Please note** that some members of the Advisory Group have moved onto other positions in other organisations, the details reflect the organisations that they represented whilst the committee met.

The Mental Health Coordinating Council and the Public Interest Advocacy Centre also wish to thank the following contributors who were particularly

generous in sharing their professional knowledge and expertise in relation to specific segments of this Manual:

- Peter Bazzana, NSW Institute of Psychiatry
- Maria Bisgoni, NSW Mental Health Review Tribunal
- Rodney Brabin, NSW Mental Health Review Tribunal
- Esther Cho, NSW Guardianship Tribunal
- Nihal Danis, NSW Mental Health Advocacy Service, Legal Aid*
- Sarah Hanson, NSW Mental Health Review Tribunal
- Jonathan Harms, Australian Relatives and Friends of the Mentally Ill
- The Hon Greg James QC, NSW Mental Health Review Tribunal
- Leslee Murphy, Office of the NSW Trustee and Guardian
- Melanie Oxenham, NSW Office of the Public Guardian
- Christine Paull, NSW Consumer Trader and Tenancy Tribunal
- Francis Rush, NSW Office of the Public Guardian

Thanks also to the Women in Prison Advocacy Network (WIPAN) for the use of some material from their '*Self Help Guide for Women Prisoners*'.

MHCC particularly thank Peter Dodd, Solicitor, Health Policy & Advocacy (PIAC) and Robin Banks who until September 2010 was Chief Executive Officer at PIAC. As consultants to the project they worked on the third edition's new material assisted by Ka Ki Ng, (who was with PIAC until April 2011).

MHCC congratulate PIAC on so successfully presenting complex legal material in such easily understandable language enabling the lay person to approach the resource effortlessly and find answers to the question at hand, without the need to wade through the entire extensive contents.

Lastly, MHCC particularly thank Corinne Henderson, Senior Policy Officer at MHCC who coordinated this extensive project, chaired the reference group, conducted consultations broadly across the sector, determined the Manual's final contents and editing.

The many website links available in this manual connect to hundreds of other freely available government and non-government service and information websites as well as to Australian state and Federal Acts and International Charters. The organisations concerned own the copyright of material on their websites and should be referenced accordingly when used in other documents.

Disclaimer

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To reference this Manual please use the following protocol:

Mental Health Coordinating Council. *The Mental Health Rights Manual: A Consumer Guide to the Legal and Human Rights of People with Mental Illness in NSW* (3rd edition) 2011. The Mental Health Coordinating Council & the Public Interest Advocacy Centre Ltd (Joint copyright © 2011). Online resource: <http://mhrc.mhcc.org.au>

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Disclaimer and currency

While every effort has been made to ensure the information in this Manual is as up to date and as accurate as possible, the law is complex and constantly changing. Readers are advised to seek expert advice when faced with specific problems.

This Manual is intended as a guide to the law and should not be used as a substitute for legal or medical advice. The information contained within the Manual applies to people who live in, or are affected by, the law as it applies in New South Wales on the date stated on each section.

The Mental Health Coordinating Council and the Public Interest Advocacy Centre take no responsibility for the accuracy of the contents of this Manual or any action taken based on the contents of this Manual.

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Background to this edition of the Manual

The first edition of the *NSW Mental Health Rights Manual* was a project co-ordinated by the Mental Health Coordinating Council (MHCC) in 1995, published by Redfern Legal Centre Publishing with the assistance of the Law and Justice Foundation of NSW. In 2004, again with the support of the Law and Justice Foundation, the second edition of the Manual was developed as an online resource. Late in 2008, MHCC were successful in securing part funding from the Law and Justice Foundation to update, extensively rewrite and redesign the third edition of *The Mental Health Rights Manual: A Consumer Guide to the Legal and Human Rights of People with Mental Illness in NSW* (3rd edition) 2011.

The *NSW Mental Health Rights Manual* (3rd edition) 2011 is a 'living document' and MHCC intends to regularly update its contents to maintain relevance to legislative change, new standards and guidelines and environmental change.

Whilst not designed as a legal resource, when MHCC first contemplated an update of the Manual, it was considered really important to present information with as much legal accuracy as possible, but do so in a form that is easy digestible for anyone interacting with the legal and mental health systems in NSW. For this reason MHCC invited the Public Interest Advocacy Centre (PIAC) to become consultant to the project.

Peter Dodd, Solicitor, Health Policy & Advocacy (PIAC) and Robin Banks who until September 2010 was Chief Executive Officer at PIAC, were consultants to the project and worked on the third edition's new material assisted by Ka Ki Ng, Research Officer (who was with PIAC until April 2011).

The manual successfully presents complex legal material in such easily understandable language enabling the lay person to approach the resource effortlessly and find answers to the question at hand, without the need to wade through the entire extensive contents.

Corinne Henderson, Senior Policy Officer, MHCC coordinated this extensive project, chaired the reference group, conducted consultations broadly across the sector, determined the Manual's final contents and editing.

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Terminology and focus

Mental Health Coordinating Council (MHCC) acknowledge the wide range of language and terminology used in the field of mental health and have endeavoured throughout this Manual to be sensitive to its usage. However, there are sections where specific terms related to legislation need to be used: for example the 'treatment, care and control' of people under the *Mental Health Act 2007* (NSW), may not be a phrase that the MHCC would choose to use in regards to the principles and standards for Recovery Orientated Practice in mental health services, however, they have a particular meaning in the context of the *Mental Health Act 2007* (NSW).

The purpose of the 3rd edition is to bring together in one resource the package of mechanisms, services and systems available to people with mental illness, their families, carers and others, including health professionals. It includes the overlapping issues to do with treatment and health care rights, disability support rights and the participatory and civil rights of people with mental disorders to participate in society as parents, employees, community members and leaders.

However, whilst MHCC takes a leadership role in promoting legislative reform and policy development in other spheres, this Manual does not seek to advocate around the law, it merely informs on the status of the law as it stands, presenting realistic ways in which people can exert their rights and meet their obligations.

MHCC is committed to ongoing communication with government agencies about the efficacy and outcomes of legislation and policies currently in place with regards to mental health. Its discussions with members and with government are published regularly in policy and position statements and submissions that are freely available through the **Mental Health Coordinating Council's** website at: www.mhcc.org.au

To uphold human rights requires more than legislation. It requires that people with mental illness and carers know their rights, and that the professions are adequately trained in these as well as codes of ethics and practice, standards and quality improvement systems. All such systems need to be supported so that working cultures in human services support recovery-orientated practice, prioritising the need for people with mental illness to be as involved as much

as possible in decision-making about their care and treatment, as well as being meaningfully involved in the development of policy and service delivery models. All workplaces need to nurture an inclusive society able to respond to people when they are at their most vulnerable, and provide the opportunities for people to contribute in the community.

Some people with mental illness may at some stage find themselves in hospital, either voluntarily or involuntarily, and so will come into contact with treatment orders under the *Mental Health Act 2007* (NSW). A simplified overview of the Act is provided so that people dealt with under the Act in the course of illness may understand their rights and responsibilities and how to maximise their autonomy within the system. However, a more in-depth Guidebook to the *Mental Health Act 2007* (NSW) will be available through **NSW Health**, the **NSW Institute of Psychiatry** and the **NSW Mental Health Review Tribunal** at a later date on the NSW Mental Health Review Tribunal website at: <http://www.mhrt.nsw.gov.au/>

When people return to a level of recovery and wellness where they are equal and active partners in their own treatment decision-making, then the rights that apply to all citizens in obtaining health care also apply to a person with ongoing mental illness. People then simply use mental health services and other services without being involuntarily treated and where contact with health professionals is in no way coercive.

MHCC aims to contribute to a system of services and advocacy structures in which the status, independence and human rights of people with mental illness, families and carers is advanced. Its aim is to promote the recovery and return to active participation in the community at all levels of all people with mental illness.

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Chapter 1 - Introduction

Part 1 Section A: About this Manual: what the Manual seeks to do and what it is not

This *Mental Health Rights Manual* (the Manual) is a resource for consumers involved in the NSW mental health system as well as carers of those consumers. The aim is to provide a guide to key areas of the law and on how to get help. It is written in plain English, free of legal and/or medical jargon. It is also a useful tool for carers and workers across the mental health and community sector.

In reality we, the authors, also understand that the Manual will often be read and consulted by health workers and lay advocates supporting consumers and carers, when they are in crisis and seeking urgent help and guidance. In such situations, it is just as important that the information is easy to access, and written in language that is easily understood.

The Manual is not designed as a guide for lawyers in this area. Many, although not all, of the areas covered by this Manual are also covered by legal texts, legal practice guides, resources produced by government and the relevant tribunals, all aimed at lawyers, using language that is familiar to those who have formal legal qualifications. Perhaps, from time to time, lawyers will find the information in the Manual useful, particularly when explaining issues to clients in plain English. However, lawyers are not the primary audience for which this Manual has been written.

While the Manual is useful for the mental health sector, it is not designed specifically for health professionals. Importantly, if it were drafted for health professionals, it would contain much more information about occupational health and safety, industrial relations issues, and information about complaints and disciplinary matters from an employee perspective. There are other sources that health professionals can consult to obtain advice about these matters, including professional organisations and trade unions.

The existence of the Manual may well provide a useful resource for clinicians and allied health workers in the sense that, hopefully, they can refer consumers to the Manual for independent information about the service system and their rights as consumers in the mental health system.

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Part 1 Section B: How to use this Manual

The Manual covers a broad range of topics in separate sections. Where appropriate the text includes links to other pages in the Manual as well as to other websites that provide related or more detailed information.

This section of the Manual gives a very brief outline of what each part of the Manual covers. You can use the Index to get an idea of the topics covered and then click on the particular topic you want to read more about. The Index is always available as a drop-down menu on the left hand side of the section/ page you are on and so you can easily use the Index to go to another part of the Manual by clicking on the entry for that part in the Index.

Each chapter begins with an overview of what is covered. Throughout the Manual, the chapters/ sections include information about where you can get help, and final chapters 10 and 11B of the Manual have information about legal and advocacy services and supports, how to complain and who to complain to about particular problems you experience, as well as information on key organisations.

Throughout the Manual there are links to other parts where there is more information about specific issues or processes. You can click on these links at any time to open different pages. Remember, the Index is always available on your screen so you can easily go back to where you were using the Index or by using the 'back' arrow on your web browser.

The Manual is designed so that links that take you to other websites should open as a separate browser page so the page of the Manual you were reading remains open.

For a short summary of what is in each part of the Manual see below.

1B.1: The *NSW Mental Health Rights Manual* (3rd edition): short summary of contents

[Foreword](#)

The Foreword provides a short history of the *NSW Mental Health Rights Manual*, acknowledges all those involved in developing and authoring its contents, publishing and copyright details and disclaimers.

[Chapter 1 - Introduction](#)

Chapter 1 has three main sections (including this one). These sections introduce you to the Manual and explain what it sets out to do and how to use it. Chapter 1 also broadly describes the NSW Mental Health system.

[Chapter 2 - The legal framework](#)

Chapter 2 has an overview (Section A) then covers three aspects of the legal framework relevant to people with mental illness. These sections give you a summary of the main laws and standards that are relevant to mental illness in NSW, as well as at a national level and internationally.

[Chapter 3 - Health care and treatment](#)

Chapter 3 has an overview (Section A) that includes information on the rights of all those who get health care in Australia that are set out in the *Australian Charter of Healthcare Rights*, then deals with seven main aspects of general health care rights in Australia.

After the overview, the next five sections of Chapter 3 (Sections B to F) give an overview of everybody's rights in relation to medical treatment, in public and private hospitals.

The last two sections of Chapter 3 (Sections G and H) provide information on access to health records, including protection of confidentiality and privacy.

[Chapter 4 - NSW mental health law and processes](#)

Chapter 4 has an overview (Section A) that includes information on the objectives of the main mental health laws, rights under those laws and information about voluntary patients under mental health law. There are then ten other sections in Chapter 4.

After the overview, the next seven sections of Chapter 4 (Sections B to H) describe the *Mental Health Act 2007* (NSW), legal definitions of mental illness, voluntary and involuntary patients, pathways to hospital admission, and lots more.

Section I outlines the ways in which involuntary patients can make a complaint about things related to their mental health status and treatment, and how to access advocacy services.

Section J explains the role of the Primary Carer in relation to disclosure of information about the person with mental illness.

Section K describes how the law deals with people who have a mental illness who have committed a criminal offence.

[Chapter 5 - Substitute decision-making and capacity](#)

Chapter 5 has an overview (Section A) that explains what substitute decision-making and capacity mean and outlines what is in the rest of this chapter. There are then seven main sections.

After the overview, the next six sections of Chapter 5 (Sections B to G) describe the roles and powers that the various types of guardians, financial managers, tribunals have to make orders affecting a person with a mental illness and to give consent on behalf of a person with a mental illness.

The last section of Chapter 5 (Section H) describes Advance Directives, what they are and how they work.

[Chapter 6 - The criminal justice system](#)

Chapter 6 has an overview (Section A) then five main sections.

After the overview, the next three sections of Chapter 6 (Sections B to D) provide an overview of the main ways in which people with mental illness have contact with the criminal justice system, with the police and the courts, and what options are available if you get fined for an offence.

Section E describes access to health care in prison and how to make a complaint.

Section F describes the rights of victims of crime, protection orders, support services and compensation.

[Chapter 7 - Rights in the community](#)

Chapter 7 is about general rights in the community and as well as the overview, the part (Section A) has seven main sections.

After the overview, the next three sections of Chapter 7 (Section B to D) outline the right to equality; that is the right to be treated equally and to not be discriminated against in all aspects of life including in employment, education, and housing.

Section E outlines your rights in relation to housing and accommodation and explains the range of different types of housing that may be available.

Section F is about pensions and benefits, who is eligible for them, how to apply and how to challenge decisions about pensions and benefits.

Section G is about some of the issues that affect families such as divorce, parenting and property disputes.

Section H describes what happens when you get a fine, and the options open to you to deal with a fine.

[Chapter 8 - Specific consumers and their needs](#)

Chapter 8 is about people with mental illness who have other significant characteristics, such as being from a non-English speaking background or being Aboriginal, having other disabilities as well as mental illness, or being a parent or carer, or a child. There is an overview of the part (Section A) then six main sections.

After the overview, the next two sections of Chapter 8 (Sections B and C) give an overview of the particular needs of Aboriginal and Torres Strait Islander people with mental illness and of people with mental illness who are from culturally and ethnically diverse backgrounds. These sections also describe the policy and standards in NSW designed to provide culturally and linguistically appropriate services and how to access language interpreting services.

The next section of Chapter 8 (Section D) describes the potential involvement of child protection services in NSW in working with people with mental illness who have family responsibilities.

Section E covers the issues for children and young people who have mental illness, their rights in relation to consent to treatment, decision-making and legal representation.

The last two sections of Chapter 8 (Sections F and G) outline issues and supports available for people with coexisting mental illness and drug and alcohol problems and/or other disabilities.

[Chapter 9 - Carers of people with mental illness](#)

Chapter 9 is written specifically for people who are caring for a person with a mental illness. Much of the information in this part is similar to information in other parts of the Manual, but written from the perspective of carers rather than that of people with mental illness. As well as an overview (Section A) that includes a definition of 'carer' and other terms that can be used in mental health care and treatment to describe carers, Chapter 9 has four main sections.

Section B gives information about supporting a family member or friend with mental illness, what a carer's rights are in supporting a family member or friend under the *Mental Health Act 2007* (NSW), and how they can be part of treatment planning and care planning.

Section C provides some information on wills and disability trusts and where to go to get advice on these.

Section D outlines the rights of carers, including rights under anti-discrimination laws.

Section E provides information where carers can access support services for themselves and for the person with mental illness for whom they provide care.

[Chapter 10 - Complaints and disputes: getting help](#)

Chapter 10 has an overview (Section A) then seven main sections. These sections describe the roles and powers of various complaint bodies, and how to get your complaint to the right place for it to be dealt with.

Chapter 10 also describes different types of advocacy you may need or want, alternative dispute resolution processes and makes recommendations on the most effective way to approach complaints.

[Chapter 11 - Appendices](#)

The last part of the Manual is the appendices. There are three appendices:

A Glossary [[link to Glossary](#)], which is a list of important terms referred to in the Manual with a short definition.

An Organisation index [[link to Organisation index](#)] that lists the organisations referred to in the Manual, provides a very brief summary of each and their contact details and where they are referred to in the Manual.

A Links page [[link to Links section](#)], which provides links to other websites that have useful information; to relevant service providers; other documents, organisations and more.

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Part 1 Section C: About the NSW mental health system

Part 1 Section C: About the NSW mental health system

This section provides an introduction to:

- [Private mental health care and treatment in NSW](#)
- [Public and community mental health care and treatment in NSW](#)
- [The dominant model of public mental health care and treatment in NSW](#)
- ['Recovery oriented practice' in community-managed mental health care services](#)

On other pages, the Manual has information about services that provide [legal advocacy and advice](#), [non-legal advocacy and advice](#) and information about [how to make a complaint in relation to aspects of the mental health system in NSW](#).

1C.1: Private mental health care and treatment in NSW

If you want private assistance for the range of conditions from emotional problems to mental illness, you can access:

- services provided by General Practitioners (GPs);
- services provided by psychiatrists, who are doctors specialising in psychiatry, usually on referral from a GP;
- services provided by psychologists or social workers qualified in a variety of specialities, usually on referral from a GP;
- services provided by counsellors or psychotherapists trained and accredited by state and national bodies (not government), without need for a referral;
- services in private psychiatric hospitals and out-patient clinics, usually accessed with financial support from private health insurance cover and arranged by private psychiatrists and psychologists;
- health services (including counselling for mental health and drug and alcohol issues) provided to young people through [HeadSpace](#)

Most treatment for mental illness, particularly for people with a diagnosis provided by a private doctor, is based on the use of psychotropic or anti-depressant medication. It is unusual to find private doctors or psychiatrists who do not use medication as a central part of their treatment of diagnosed mental illness.

Generally people with other mental health problems (such as anxiety disorders, depression and compulsive disorders) get help through referral from their GP to a combination of services that includes medication and/or psychotherapy from a psychiatrist and counselling or psychotherapy from a psychologist or social worker.

1C.2: Public and community mental health care and treatment in NSW

If you cannot afford private health care or want to access non-private health care, the following options are available to you:

- care in the community through community mental health units usually attached, sometimes physically, to public psychiatric hospitals or units;
- inpatient care in public psychiatric hospitals or units run by the NSW Government;
- counselling services provided by various organisations, hospitals and community health providers in particular areas such as drug and alcohol counselling, grief counselling, relationship counselling, rape crisis counselling, and trauma counselling;
- [referral to private health providers, usually psychologists, who may or may not 'bulk bill' \(that is, not ask for an upfront payment\)](#).

Under the *Mental Health Act 2007* (NSW), you can be [forced to have care and treatment in hospital](#) and [sometimes forced to take medication in the community through Community Treatment Orders \(CTOs\)](#). Both are types of involuntary treatment.

1C.2.1: The dominant model of public mental health treatment and care in NSW

In all public mental health care services in NSW, except counselling and psychological services, the care and treatment you will receive will be:

- based on the medical model, that is treating your emotional/mental problem as an 'illness'; and
- with very limited exceptions, the administration and monitoring of medication only.

Therapies, such as behaviour modification that do not use medication or that complement drug treatments, are not generally provided in NSW public mental health facilities, whether you are a voluntary or involuntary patient.

Counselling is sometimes a component of public mental health community-based treatment but treatment with medicine remains the main focus of that treatment as well.

Social workers, often working in or linked to public hospitals, can provide a variety of advice and assistance in areas other than about direct treatment, such as accommodation, employment issues, arranging services such as occupational therapy, as well as giving advice about how the mental health system works. Social workers can also be accessed through community services.

Mental health community services often provide support in the areas of case management, supported accommodation, living skills training and also help to make contact with employment and social supports. Referral to such programs is generally through clinical services.

1C.2.2: The dominant model of care and support in community-managed mental health services in NSW: 'Recovery Orientated Practice'

In NSW, many services are delivered by non-government organisations (NGOs). Community-managed mental health organisations offer a wide range of holistic treatment, care and support programs in which the model of care is described as 'Recovery Orientated Practice'. Services in community-managed mental health organisations are provided by a range of allied health care professionals including: mental health professionals; social workers and case managers; support and peer support workers and volunteers; drug and alcohol and other counsellors and psychologists; and other community workers.

You may access some of these services through a referral from a public facility, a psychiatrist or GP, or a psychologist or other health professional. However, as a general rule, you can self-refer direct to community services. Some of these services are listed in the [Appendix B](#).

Recovery is described as a deeply personal, unique process of changing one's attitudes, values, feelings, goals, skills, and/or roles. It is a way of living a satisfying, hopeful, and contributing life, even with the limitations caused by mental illness. Recovery involves the development of new meaning and purpose in one's life as one grows beyond the challenging effects of mental illness. Recovery in a broad sense is about finding a way to get back on track after experiencing illness.

Community-managed mental health organisations embrace principles of recovery in order to enhance a person's very individual recovery journey. Recovery Orientated Practice is a holistic approach to illness that addresses all aspects of a person's life, including psychological and physical needs, as well as social, economic, education, employment, housing and other needs at the same time, whilst maximising the ability to live in the community independently. The focus is on the individual and their needs first, and on the illness, which is only one part of the person, second.

What you can expect from a community-managed organisation is a service that will support you through your individual recovery journey. This is at an organisational as well as individual level. Their role is to help you meet your goals rather than determine the direction. The principles of recovery on an individual level include, but are not limited to:

- Hope
- Meaning, purpose and direction
- Rights and personal responsibility

- Equality and respect
- Empowerment and self-determination
- Social inclusion and connectedness

The role of the service provider is to aid the process of recovery, rather than decide its direction, by for example:

- helping natural support systems;
- helping you to access a range of other community services, supports and networks;
- enabling access to services such as drug and alcohol, trauma and other counselling services;
- providing access to opportunities for employment, education and training, and acquiring new skills; and
- securing long-term housing.

By including every aspect of recovery in service delivery, organisations provide opportunities for participating in self-advocacy, consultation and involvement in the development of how services are run and policy is developed, and peer support and self-help.

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Chapter 2 - The Legal Framework

Part 2 Section A: The legal framework

Part 2 Section A: The legal framework

Overview of the legal system

The legal system in NSW (and Australia) is based on the system used in the English-speaking world, originally from Great Britain and then spreading to Australia, New Zealand, Canada, other Commonwealth countries and (to some extent) the USA. These are sometimes called the 'common law' countries. This section provides only a very brief overview of the legal system. [For more about the law and legal system, access Hot Topic No. 60 from the State Library of NSW website by clicking here.](#)

Australia's legal system has some particular features:

- Strict separation between the institutions involved with law making (Parliament and the Executive) and the interpretation of the law (the Judiciary (or courts)).
- An adversarial system of fact-finding in the courts rather than an inquisitorial system found in Europe and other parts of the world.
- The 'common law' where judges make law when there are gaps in the written law made by Parliament and sometimes the Executive, and are required to apply the law laid down in previous decisions of courts at the same or a higher level in the court system (the doctrine of precedent).
- A presumption of innocence by the Courts when someone has been charged with a crime.

In this overview section, there is information about:

- [What are laws?](#)
- [What are rights?](#) (including information on 'human rights');
- [What are standards and how are they different to laws and rights?](#) (including information on health care rights).

This part of the Manual then outlines some of the laws and standards that are particularly relevant to [mental illness that apply in NSW, across Australia and internationally.](#)

2A.1: What are laws?

Laws are rules that are enforced by the Executive branch of government or the Judicial branch of government or both. They are rules that apply to everyone, no-one is above the law.

If you break a law or ignore a law, some consequence may follow. Another person might take you to court to challenge your action, or the government in one form or other, such as the police, may take legal action against you, particularly if the law you break is a criminal law. This process of the government taking action when a law is broken is what is meant by 'enforcement' of the law.

Statute law or legislation is written law made by Parliament. These are called 'Acts' of Parliament. Before Parliament decides to pass (that is, vote in favour of) an Act of Parliament (that is, while the members of the Parliament are debating what should be in the Act and whether or not to vote in favour of it), it is called a 'Bill'.

Regulations are a form of legislation that is made by the Executive with the Parliament's approval. Regulations can only be made where there is an Act that specifically sets out that regulations can be made in relation to particular matters dealt with in the Act.

Common law is law decided by judges to fill in gaps in the written law.

In Australia, laws can be made by state parliaments, such as the NSW Parliament, or the Federal/Commonwealth Parliament. Local government (Councils and Shires) also makes laws; these are called 'By-laws'.

2A.2: What are rights?

Rights are 'just claims' that come from laws, tradition or morality.

2A.2.1: What are human rights?

'Human rights' are basic rights and freedoms to which all humans are said to be entitled.

Some of what are seen as human rights are found in the NSW and Australian laws that now operate, both statute law (Acts and regulations) and common law. A 'right to privacy' is an example of this sort of human right. The right to privacy is found in the Acts of Parliament about personal [information privacy](#) and it is beginning to be found in 'the common law' through decisions (judgments) of English courts in particular.

Because Australia, unlike other comparable countries, does not have something that is called a legislated 'Charter of Rights', 'Human Rights Act' or 'Bill of Rights' that sets out enforceable human rights, many of the human rights that you might think are enforceable under Australian law, are not part of any written law in Australia.

For example, although voting is compulsory in Australia for adults over 18 years of age, there is no enforceable 'right to vote'. The same applies to the 'right to health care' and even the 'right to life'.

The [Universal Declaration of Human Rights](#) is probably the best-known international statement of human rights.

Just because a right is set out in this and other international agreements on human rights, does not mean you can go to an Australian court or the police and ask that this right be enforced. For this to happen, the right has to be included in Australian law, either in legislation or have developed as part of the common law.

This does not make documents like the *Universal Declaration of Human Rights* (UDHR) of no use. If you or a group you belong to think that your rights have been ignored, then you can refer to documents like the UDHR when you talk to government or an organisation about your problem. Sometimes, but unfortunately not always, both governments and organisations can be persuaded to protect human rights stated in international documents like the UDHR.

Many people in Australia want the rights set out in the UDHR to be included in enforceable legislation in Australia in the form of an Australian Charter of Human Rights.

Currently there is no single piece of legislation in NSW or at the national level in Australia that sets out human rights (there is such legislation in both the Australian Capital Territory and Victoria). Some of the internationally recognised rights are found in separate NSW and Commonwealth legislation, in common law, and a very limited number are found in the Australian *Constitution*.

The [Universal Declaration of Human Rights](#) and other international rights documents are part of international law .

2A.3: What are standards and how are they different to laws and rights?

Standards, for example in health care, are not generally documents that prescribe particular behaviour or prescribe what is forbidden and what is permitted. ('Prescribe' means absolutely require.) Standards are usually a statement of a level of quality of performance or conduct that is regarded as normal, adequate or acceptable.

(There are standards, such as the *Disability Standards for Education 2005* (Cth) that are actually legislation and, as such, set out what is required and are enforceable.)

Standards generally either set out what should be achieved or what should be done, depending on what the standards are about. There are many ways that standards are documented and a range of places they can be found. Some standards are written down in legislation. Other standards come about as a result of custom and practice, and are not written down at all. There may be complaints bodies that have responsibility for dealing with breaches of standards (for example the Energy and Water Ombudsman or the Private Health Insurance Ombudsman). Other standards may only be enforced by the civil law through the person who received the health care having to take legal action for compensation if the standards are breached.

One area of particular relevance is health care standards. For more information about health care standards, [click here](#) . You can also find out about [where health care standards are found](#) and [how breaches of such standards are likely to be identified](#) and [what can happen if a health care standard is breached](#).

2A.4: Health care standards

Standards in health care are not necessarily a statement of best practice, but a statement of the least acceptable practice. Therefore standards do not set out clearly what should be done or what should not be done (as laws often do). They are not focused on individual claims (as rights usually are).

However, it can be argued that the existence of standards in health care gives everyone a right to health care to the appropriate standard. For more about standards relevant to health care, click on the links below:

- [Where are health care standards found?](#)
- [How are breaches in health care standards identified?](#)
- [What happens if health care standards are breached?](#)

2A.4.1: Where are health care standards found?

Standards for health care are often, but not always, found in a written form.

Examples of written standards for health care are found in:

- NSW Health policies and protocols;
- Codes of conduct for health care professionals;
- Standards set by colleges of specialist medical practitioners, such as the Royal Australian College of General Practitioners (RACGP).

You can often find out about what is the relevant health care standard by asking a health care professional in the relevant area of health care to comment on the performance or conduct in question. This is called 'peer review'. The peer reviewer in this situation advises whether they believe the conduct or performance of the health care professional in question was acceptable or not acceptable according to the ethical and/or performance standards of the profession.

Even if a health care professional is found to have breached the standards they have not necessarily broken any law. The outcome for the health care professional in this situation could range from no action, to counselling about the breach of standards, to deregistration, with various other outcomes in between. The outcome for a health care provider (like a hospital) if basic standards have been found to be breached is usually the requirement that the provider will take steps to ensure that similar breaches don't happen again.

The law of negligence (part of the common law) refers to a 'standard of care'. Expert evidence is usually required to establish whether a person or an organisation has breached a 'standard of care'. The law of negligence applies legal tests to establish whether a health care professional or health care provider has been negligent. These tests are different from but similar to the tests used in deciding whether a professional has failed to meet professional standards.

2A.4.2: How are breaches in health care standards identified?

The usual way that breaches of standards are identified is through complaints by people who have been directly affected by the breach or by their family

members. It is important to remember that often the only people that are aware of conduct or omissions that constitute breaches of standards are the person who is getting the health care and the health care professional. If the person getting the health care does not complain, then the breach of standards is likely to go undetected. The complaints process, through the [Health Care Complaints Commission \(HCCC\)](#) in NSW, is a vital element in the maintenance of health care standards.

There are also times when health care professionals report alleged breaches of standards by their fellow professionals or by health care providers.

NSW Health has a policy of identifying critical incidents in the NSW public health system and then doing a 'root cause analysis' of what happened. The outcome of this process is totally focused on possible recommendations for systemic change, not on identifying evidence for possible disciplinary proceedings against a health care professional.

Another way breaches of standards are identified is through Coronial Inquests. Coroners, who are magistrates (a type of judge), conduct Inquests, which are court proceedings to find how a person died and what caused their death. The Coroner can make recommendations relevant to their findings on, for example, deaths in hospital. These might be recommendations to health care providers about changes in policies and procedures to prevent further deaths.

Coroners cannot make findings that a particular individual is responsible for a death but do have power to refer individuals to the Director of Public Prosecutions (DPP) for possible criminal charges, or to the Health Care Complaints Commission (HCCC) for possible investigation and disciplinary action.

2A.4.3: What happens if health care standards are breached?

A breach of a standard by a health care professional may lead to disciplinary action. Disciplinary action, if a breach of standards is established, can range from a caution with professional counselling, to suspension or deregistration from their profession. Suspension or deregistration are more severe and much less common than other disciplinary actions.

A breach of standards by a health care provider such as a hospital, aged-care facility or medical centre should lead to changes in procedures and protocols of provider to ensure the mistake is not repeated.

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Part 2 Section B: NSW State laws, standards and guidelines

2B.1: NSW laws

There are several laws that are of particular interest to people with mental illness in NSW:

[Mental Health Act 2007 \(NSW\)](#)

The *Mental Health Act 2007* (NSW) deals with how a person can be made an involuntary patient due to mental illness in NSW, the consequences of this in terms of care, control and treatment, as well as dealing with some elements of mental health care and treatment for voluntary patients. [Click here](#) for more information .

[Mental Health \(Forensic Provisions\) Act 1990 \(NSW\)](#)

The *Mental Health (Forensic Provisions) Act 1990* (NSW):

- sets out how criminal cases are dealt with in the Supreme, District and Local Courts when the defendant has a 'mental disorder';
- deals with mental illness as a defence in criminal cases;
- as well as regulating forensic patients and patients in prisons, including setting out the role and powers of the Mental Health Review Tribunal in reviewing forensic and correctional patients.

[Click here](#) to read about mental illness and the criminal justice system .

[Privacy and Personal Information Protection Act 1998 \(NSW\)](#)

The *Privacy and Personal Information Protection Act 1998* (NSW) is about privacy of personal information.

The Act sets out privacy principles that apply to the collection, retention, use and disclosure of personal information as well as access to personal information for the individual whose information it is.

The Act provides remedies for breach of the privacy principles. [Click here](#) for more about confidentiality and privacy.

[Health Records and Information Privacy Act 2002 \(NSW\)](#)

The *Health Records and Information Privacy Act 2002* (NSW) is about privacy of personal health information. The Act sets out health privacy principles that apply to the collection, retention, use and disclosure of personal health information as well as access to personal health information for the individual whose information it is.

The Act provides remedies for breach of the health privacy principles. [Click here](#) for more information.

[Anti-Discrimination Act 1977 \(NSW\)](#)

The *Anti-Discrimination Act 1977* (NSW) makes it unlawful to discriminate against a person on the basis of their race, sex, transgender, marital or domestic status, disability (which includes mental illness), homosexuality and age. [Click here](#) for more information.

[NSW Trustee and Guardian Act 2009 \(NSW\)](#)

The *NSW Trustee and Guardian Act 2009* (NSW):

- regulates the management of the property (including money) of individuals who don't have the capacity to make financial decisions;
- sets out the powers of the NSW Trustee and Guardian;
- sets out the authority of the Supreme Court to make Financial Management Orders; and
- gives the Mental Health Review Tribunal powers to make Financial Management Orders for involuntary patients.

[Click here](#) for more information.

[Guardianship Act 1987 \(NSW\)](#)

The *Guardianship Act 1987* (NSW):

- sets out the powers and functions of the Guardianship Tribunal and the Public Guardian;
- allows the appointment of enduring guardians; and
- regulates enduring guardians.

To find out more about guardianship, [click here](#).

[Disability Services Act 1993 \(NSW\)](#)

The *Disability Services Act 1993* (NSW) deals with funding of specialist services and supports to enable people with disability (which includes mental illness) to achieve their maximum potential as members of the community. It also sets out standards for those services.

2B.2: NSW standards and guidelines

NSW Health – [Charter for Mental Health Care in NSW](#)

The *Charter for Mental Health Care in NSW* outlines the way in which a person can reasonably expect mental health services to be delivered in NSW.

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Part 2 Section C: Australian national laws and standards

2C.1 : Australian national laws

There are a numbers of laws that cover the whole of Australia (these are called Commonwealth laws) that are of particular interest to people with mental illness in NSW:

[Disability Discrimination Act 1992 \(Cth\)](#)

The *Disability Discrimination Act 1992* (Cth) makes it unlawful to discriminate against a person because they have a disability (or are thought to have a disability) in the areas of accommodation, education, access to premises, clubs and sport, the provision of goods, services and land, and the administration of Commonwealth law and programs. Disability under this Act includes mental illness.

For more information about laws against discrimination because of mental illness [click here](#).

[Privacy Act 1988 \(Cth\)](#)

The *Privacy Act 1988* (Cth) sets out the privacy principles that apply to the collection, retention, use and disclosure of personal information and access to personal information held by the Commonwealth public sector and the private sector. This includes health information.

The Act provides remedies for breach of these privacy principles. [Click here](#) to read about confidentiality and privacy .

[2C.2] Australian national standards and guidelines

There are several standards and guidelines that cover the whole of Australia that are of particular interest to people with mental illness in NSW:

[National Standards for Mental Health Services](#)

The *National Standards for Mental Health Services* are standards that apply to all mental health services across Australia. The Standards include recommendations on how to put the standards into effect and monitor whether or not mental health services are meeting the standards.

[National Standards for Disability Services](#)

The *National Standards for Disability Services* are standards that disability employment services must meet if they are to get Commonwealth Government funding. The standards are about service access, individual need, decision-making and choice, privacy, participation and integration, complaints valued status and service management.

[Mental Health: statement of rights and responsibilities](#)

The *Mental Health: statement of rights and responsibilities* is a statement of key rights and responsibilities of people with mental illness.

[Australian Charter of Healthcare Rights](#)

The *Australian Charter of Healthcare Rights* is a statement of basic health care rights of everyone in Australia who gets health care. The Charter was adopted in 2008 by the Health Ministers in all Australian governments.

For more about the *Australian Charter of Healthcare Rights*, [click here](#).

[National Action Plan on Mental Health \(2006–2011\)](#)

The *National Action Plan on Mental Health* is a plan adopted by all Australian governments (Commonwealth, state and territory), through the Council of Australian Governments (COAG) process. The Plan sets out responsibilities for service delivery in the mental health area.

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Part 2 Section D: International laws and guidelines

International law is the law that governs the relationships between different countries.

International treaties (sometimes called 'conventions' or 'covenants') are part of international law. Treaties are agreements between many different countries setting out general principles about a particular subject such as human rights. There are a number of international treaties about human rights. For more about some of the main human rights treaties that are particularly relevant to people with mental illness, [click here](#).

Most, but not all, of these are treaties developed by the United Nations. International treaties apply to all of the countries that have 'ratified' them ('ratified' means formally agreed to be bound by).

International declarations are statements of principles or standards in international law that have no legal effect. There are several international declarations about human rights and standards of care that are relevant to people with mental illness. For more about these declarations, [click here](#). There are also a range of [international documents](#) that set out standards and principles relevant to people with mental illness.

Human rights treaties sometimes have 'optional protocols' linked to them that either deal in more detail with a specific issue covered in the treaty, or with monitoring of the treaty, and/or with how individuals can complain if they believe their rights set out in the treaty have been breached.

After the government of a country has signed a treaty, it also has to be ratified by the government of the country to give it full force. In Australia, it is the Commonwealth Government that decides whether or not to ratify a treaty. There is a Joint Standing Committee on Treaties of the Commonwealth Parliament that advises the Commonwealth Government on whether a treaty should be ratified or not.

Even if a treaty is ratified, there is often little an individual can do to enforce the terms of a treaty if the terms of the treaty, such as particular individual human rights, are not then included in the laws made by parliaments in Australia. However, some treaties have complaints mechanisms that individuals can use, after they have tried legal options available under their country's laws.

As well as the range of international documents that may be relevant to the rights and needs of people with mental illness, there is also a couple of bodies and people who have particular responsibilities:

- The United Nations [Special Rapporteur on Disability](#) is appointed because of his or her specialist expertise in disability. The Rapporteur reports to the United Nations on key issues affecting people with disability.
- The United Nations Committee on the Rights of Persons with Disabilities is the international committee of experts appointed under the [Convention on the Rights of Persons with Disabilities](#) to receive complaints from individuals about breaches of their rights and reports from countries about their work to implement and uphold this treaty.

2D.1: Key international declarations

[Universal Declaration of Human Rights](#)

The *Universal Declaration of Human Rights* was first adopted by the United Nations General Assembly in 1948. (The General Assembly is like the parliament of the United Nations). It was the first comprehensive international statement of human rights principles. It has 30 articles.

The contents of the articles in the *Universal Declaration of Human Rights* have been elaborated and expanded in later treaties and protocols on human rights.

Following is a summary of the rights set out in the *Universal Declaration of Human Rights*:

- Article 1 Right to equality
- Article 2 Freedom from discrimination
- Article 3 Right to life, liberty, personal security
- Article 4 Freedom from slavery

- Article 5 Freedom from torture and degrading treatment
- Article 6 Right to recognition as a person before the law
- Article 7 Right to equality before the Law
- Article 8 Right to remedy by competent tribunal
- Article 9 Freedom from arbitrary arrest and exile
- Article 10 Right to fair public hearing
- Article 11 Right to be considered innocent until proven guilty
- Article 12 Freedom from interference with privacy, family, home and correspondence
- Article 13 Right to free movement in and out of the country
- Article 14 Right to asylum in other countries from persecution
- Article 15 Right to a nationality and the freedom to change it
- Article 16 Right to marriage and family
- Article 17 Right to own property
- Article 18 Freedom of belief and religion
- Article 19 Freedom of opinion and information
- Article 20 Right of peaceful assembly and association
- Article 21 Right to participate in government and in free elections
- Article 22 Right to social security
- Article 23 Right to desirable work and to join trade unions
- Article 24 Right to rest and leisure
- Article 25 Right to adequate living standard
- Article 26 Right to education
- Article 27 Right to participate in the cultural life of community
- Article 28 Right to a social order that articulates this document
- Article 29 Community duties essential to free and full development
- Article 30 Freedom from state or personal interference in the above rights

Click here for the full version of the [Universal Declaration of Human Rights](#).

2D.2: International human rights treaties

There are a number of international human rights treaties.

Two of these treaties set out in detail the human rights that are to be protected, promoted and fulfilled for everyone. [These are the International Covenant on Economic Social and Cultural Rights and the International Covenant on Civil and Political Rights](#).

There are also a number of specialist human rights treaties that consider the particular aspects of human rights that affect particular population groups. The following are the key specialist human rights treaties:

- [Convention relating to the Status of Refugees \(1951\)](#)
- [International Convention on the Elimination of all Forms of Racial Discrimination \(1966\)](#)
- [Convention on the Elimination of all Forms of Discrimination against Women \(1979\)](#)
- [Convention on the Rights of the Child \(1989\)](#)
- [Convention on the Rights of Persons with Disabilities \(2007\)](#)

[The next page](#) has more information about the *International Covenant on Economic Social and Cultural Rights* and the *International Covenant on Civil and Political Rights*, the *Convention on the Rights of the Child*, and the *Convention on the Rights of Persons with Disabilities*.

For more about international human rights law and other human rights treaties, click [here](#).

2D.2.1: [International Covenant on Civil and Political Rights \(ICCPR\)](#) and the [Second Optional Protocol](#) and the [International Covenant on Economic, Social and Cultural Rights \(ICESCR\)](#)

The *International Covenant on Civil and Political Rights (ICCPR)* and the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* are the two main international treaties that expand on the principles in the *Universal Declaration of Human Rights* and set them out in far greater detail in a legally binding agreement between countries. Both are treaties developed by the United Nations.

The *Second Optional Protocol* to the ICCPR enables individuals to make a complaint to a United Nations committee if they believe one or more of their rights set out in the ICCPR have been breached.

Australia has ratified (accepted obligations as a country under) both treaties and the optional protocol. Australia has not, with minor exceptions, incorporated the rights contained in the ICCPR and the ICESCR into domestic law (that is, laws made by the parliaments of the Commonwealth, states or territories).

Article 12 of the ICESCR recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2D.2.2 : [Convention on the Rights of Persons with Disabilities](#) and the [Optional Protocol](#)

The *Convention on the Rights of Persons with Disabilities (CRPD)* was developed by the United Nations. Australia ratified this treaty in 2008 and has also ratified the optional protocol. The purpose of the CRPD is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms for all people with disability, and to promote respect for their inherent dignity.

The *Optional Protocol* to the CRPD allows an individual to make a complaint to the United Nations Committee on the Rights of Persons with Disabilities if they believe one or more of their rights set out in the CRPD have been breached.

2D.2.3: [Convention on the Rights of the Child](#)

The *Convention on the Rights of the Child (CROC)* is a United Nations treaty. It recognises the rights of children and that children need special care and protection.

Australia ratified the CROC in 1990.

2D.3: International standards and guidelines

International standards and guidelines are all general statements of principle standards meant to guide governments and service providers. They are not binding or enforceable in any way if they are not followed.

The following international documents set out a range of standards and guidelines that are particularly relevant to people with mental illness.

- United Nations [Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care](#)
- United Nations [Standard Rules on the Equalization of Opportunities for Persons with Disabilities](#)
- United Nations [Basic Principles for the Treatment of Prisoners](#)
- United Nations [Standard Minimum Rules for the Treatment of Prisoners](#)
- United Nations [Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment](#)
- United Nations [World Program of Action Concerning Disabled Persons](#)
- World Health Organisation [Mental Health Care Law: Ten Basic Principles](#) (1996)

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Chapter 3 - Health Care and Treatment

Part 3 Section A: Overview: everybody's health care rights

This Manual aims to help people with mental illness to find their way through the legal aspects of the mental health system in NSW and to understand their rights more generally and where they can go for help to protect those rights.

However, the treatment of mental illness cannot be seen in isolation from the general health system.

More and more people these days are treated by their GP for emotional and mood problems. Some people access private psychiatry or psychology services either at their own cost or with financial help from private insurance or Medicare.

For these people, the rights and obligations that are relevant to the care and treatment they receive for mental illness and/or emotional problems are not found in the specific mental health laws, but in the general law applying to all health services, private and public.

All NSW citizens have rights (and, as is sometimes emphasised, also responsibilities) as recipients of health care.

Many aspects of the law do not make a distinction between mental health services and other health services.

To understand the law about mental illness in NSW, you need first to understand your rights as an adult user of health care services. This Part of the Manual focuses on these general rights that all users of health care services have in relation to health care in NSW.

For example, the law and practice about confidentiality of individual medical records and the law about privacy of a person's health information apply equally to health information about treatment of a mental illness as to any other medical condition.

This part provides an overview of the following aspects of the rights and obligations of all users of health care and medical services in NSW:

- [Specific rights in relation to medical treatment](#)
- [Rights in public hospitals](#)
- [Rights in private hospitals](#)
- [Access to health care services](#)
- [Standards of health care](#)
- [Your health information privacy](#)
- [Access to your personal health or medical information](#)
- [The Australian Charter of Healthcare Rights](#)

3A.1: Australian Charter of Healthcare Rights

In July 2008, the Australian Health Ministers agreed to the *Australian Charter of Healthcare Rights*.

Although there is not yet any way for a person to enforce the rights in the Charter if health care providers do not uphold them, the Charter is a first step to having an enforceable set of rights in the future.

[Click here for a link to the Australian Charter of Healthcare Rights.](#)

The fact that the Charter has been agreed to by all governments in Australia—state, territory and Commonwealth—means that it is a useful starting point when trying to assert rights in the health care system.

The *Australian Charter of Healthcare Rights* sets out the rights of all people in Australia to:

- Access health care
- Get health care that is safe and of high quality
- Be shown respect, dignity and consideration when getting health care
- Be informed about health care services, treatment, options and costs in a clear and open way
- Be included in decisions and choices about their health care
- Privacy and confidentiality of their personal information
- Comment on the health care they receive and to have their concerns addressed.

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Part 3 Section B: Specific rights in relation to medical treatment

Everybody has rights about agreeing to or refusing medical treatment. For a person to properly agree to medical treatment, consent must be [informed consent](#).

To exercise informed consent, sometimes the person might need to be properly informed by seeking a [second opinion](#).

All adults with capacity have the [right to refuse treatment](#).

It is also important to understand that there are restrictions to accessing prescription medication by '[doctor shoppers](#)'.

3B.1: Informed consent

A provider of health care must take reasonable steps to make sure that you, as a patient, understand key aspects and effects of any treatment they suggest before asking you to agree to the treatment. You agreeing to the treatment is called 'consent' to treatment.

To comply with this requirement, health care providers must also give you enough information to make an informed decision about the treatment. Your agreement, once you have been given (and understand) this information is called 'informed consent' to treatment.

The information that you are given should include how the treatment will be given, possible outcomes of the treatment, and risks related to the treatment including possible side effects of medication.

Despite this legal obligation to give you this information, you should always ask about the possible side effects of the treatment or medications that are being suggested. Pharmacists are also able to answer questions about possible side effects of medication. Information about possible side effects of medication is often found in information sheets in the medication package or on the package. The Federal Government also runs a Medicines Line (Ph: 1300 888 763*, Monday to Friday, 9.00 am–5.00 pm) about prescription, over-the-counter and complementary medicines. [Click here for more information](#).

If you are unsure about whether to agree to an operation or procedure, or to take a particular medication, you can always seek a [second opinion](#) from another medical practitioner or health care professional.

Prescription medication should always be taken in accordance with the directions on the script and the label. If you take twice the recommended dose of a medication or in a dangerous combination with other drugs, legal or illegal, or alcohol, the prescribing doctor will not be responsible for any negative outcomes. The same could apply if you do not follow medical advice about pre-operation preparation and post-operation follow up, particularly if you do not tell the doctor the truth about what you have done or failed to do.

Doctors and other health care professionals do not have to warn patients about every possible side effect of medication or every possible negative outcome of an operation or treatment. What health care professionals must tell you depends on what you tell them. So if you have special circumstances, for example, if you are pregnant or are taking other medication, telling the doctor this means that they have to think more about possible negative effects, and tell you about them.

For emergencies with medicines or poisons or combinations of both, the NSW Poisons Information Centre has a 24-hour telephone hotline: 131 126*. [Click here to go to the NSW Poisons Information Centre's website](#).

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) and to Local call numbers (numbers starting with 13 or 1300) are charged to the caller at the usual mobile rate.

3B.2: A second opinion

Asking for a second opinion is part of exercising your right to be properly informed before agreeing to treatment.

Under the Medicare system, there are no restrictions on how many doctors you may see for advice. (You may be accused of '[doctor shopping](#)' if you try to get the same medication, especially Schedule 8 medicines, from a number of different doctors.) If you want a second opinion from a medical specialist, you may have to go back to your GP to get a referral to the second specialist. Although your GP may be happy to do this, there is no legal obligation on your doctor to give you a second referral in these circumstances. Without a referral you cannot claim the payment under Medicare.

A doctor providing a second opinion may also insist on seeing all your previous medical notes before they see you, or before they give their opinion.

There are situations where getting a second opinion may be practically difficult. If you are a public patient in hospital, the hospital may not object to you getting a second opinion but is unlikely to pay for it if the second doctor is a private practitioner. If you are physically unable to leave the hospital, getting a doctor to agree to visit you in hospital, particularly a medical specialist, is likely to be hard.

You can ask for a second opinion from another doctor within the public health system, and the second doctor will have access to your full hospital medical record, including previous diagnoses and advices. Doctors are obliged, in this situation, to give their own assessment based on the information available to them.

People, who are not able to leave their home without help, and aged and infirm people in aged-care facilities, may have serious difficulties getting medical treatment. A second opinion in these circumstances may be even harder to get. Doctors who make home visits are increasingly rare. Medical specialists, including psychiatrists, who agree to home visits are even rarer still.

In Australia, there are shortages of health care professionals, particularly medical specialists, in rural and remote areas, and even in some regional and urban areas. In these circumstances, getting a second opinion may not be possible without travelling to see the medical professional, usually at your own expense.

3B.3: Refusing medical treatment

It is considered unlawful (and called a 'battery') to give someone medical treatment without their consent. This includes using physical force to make someone have treatment. An exception to this rule is emergency situations, where a life or lives are threatened, and it is not possible to get the patient's consent.

It follows that an adult who has the mental capacity [to be linked to Glossary definition] to make the decision has the right to refuse any treatment.

The situation is different for [children under 16](#) for whom a parent or guardian can usually give consent, and [for people who lack the capacity to make decisions about medical treatment](#), who can be treated under a court or tribunal order.

If someone has made an '[advance directive](#)', they can include in that directive what treatment they want and don't want to receive. The law in NSW recognises that the directions given in an advance directive are to be followed, even though the person may have later lost capacity to make a decision about treatment.

Parliament can pass laws to override the general right to refuse medical treatment. [The Mental Health Act 2007 \(NSW\) is an example of such a law, as it allows medical treatment of people who are either 'mentally ill' or 'mentally disordered' under the definitions in that Act without their consent.](#)

3B.4: Restricting access of 'doctor shoppers' to prescriptions for medication

Under Medicare you are able to access any GP you choose, and under privacy principles, your GP can't tell another doctor about your prescription history.

If a doctor suspects that his or her patient is getting medicine in excess of medical need they can report this to Medicare's Prescription Shopping Information Service. Once registered to this service, a doctor can be provided with all your recent prescribing history with all other doctors. [Click here for more information about the Prescription Shopping Program.](#)

If you are suspected of being a 'doctor shopper' and you want to continue to be prescribed Schedule 8 drugs or Schedule 4 medicines that are drugs of dependence, such as benzodiazepines, then you can be required to sign an agreement to restrict the prescription and dispensing of those drugs to you to one GP and one pharmacist only. Such an agreement would also require your consent to the GP having access to your Pharmaceutical Benefits Scheme prescription records for all doctors and all pharmacists.

Medicare Australia defines 'doctor shoppers' as people who have thirty or more Medicare consultations a year or who see more than fifteen different GPs to get more Pharmaceutical Benefits Scheme (PBS) prescriptions than appear to be clinically necessary.

If you are defined as a 'doctor shopper' and refuse to sign this sort of agreement, then the Pharmaceutical Services Branch of NSW Health will almost certainly cancel the authority for you to be prescribed a Schedule 8 medicine, or the doctor may simply refuse to prescribe medication for you. If you breach an agreement, you will be risking your authority being cancelled, or your doctor may simply refuse to prescribe to you a medication such as a medicine containing benzodiazepine.

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Part 3 Section C: Rights in public hospitals

This section describes your rights in public hospitals. It has information about:

- [Admission to a public hospital](#)
- [Discharge from a public hospital](#)
- [Who makes the decisions about your health care in a public hospital](#)
- [Maintaining partner, family and community relationships and meeting sexual needs in public hospitals](#)
- [Unwanted sexual contact in public hospitals](#)
- [Occupational health and safety issues in public hospitals](#)
- [Smoking in public hospitals](#)
- [Food in public hospitals](#)

3C.1: Admission

There are two ways a person can be admitted to a public hospital. The first is as a result of a visit to a hospital emergency department if the hospital's medical team decides that a stay in hospital is needed. The second is by prior arrangement through a doctor, either in an emergency situation or through a pre-planned admission, usually for an operation, medical procedure or test, but sometimes just for observation.

Although it could be said that in NSW you have a right to emergency treatment in a hospital, you do not have an absolute right to be admitted to a public hospital. Usually these things are negotiated between the doctors concerned, but even if a private medical practitioner thinks you should be admitted, a public hospital can refuse to admit you. This could be because medical opinions differ or because of the lack of an available bed.

The [Mental Health Act 2007 \(NSW\)](#) makes specific reference to 'voluntary patients', and sets out specific rules about voluntary patients in public psychiatric hospitals and units. However, generally speaking a voluntary patient in this situation is in the same position to a patient in a general hospital, subject to both rights and obligations.

3C.2: Discharge

While you are a patient in hospital, you cannot be forced to stay if you want to leave.

Your treating doctor in the hospital usually makes the decision about when you will be discharged from hospital and this decision is generally made for medical reasons. Being discharged from hospital too early can be a breach of standards of care.

If you want to leave before the decision to discharge you is made, you should expect resistance from hospital staff. Although you cannot be physically stopped from leaving, you are likely to be asked to sign a discharge form that states that the hospital will not be held responsible for anything negative that happens because of your (early) discharge. You cannot be forced to sign any form, but if you leave in these circumstances you are likely to be limiting the hospital's responsibility. Discharging yourself is likely to stop you getting appropriate planned follow up and post-discharge care. However, if you are determined to leave, your time of discharge and post-discharge care can often be negotiated with your treating doctor and other hospital staff.

There is a possible exception to the rule that you cannot be forced to stay in a public hospital if you don't want to. If you [temporarily lose your capacity](#) to make decisions, and you are considered to be endangering your own life if you leave, there are [NSW Health policies](#) that permit the use of restraint and sedation. This situation sometimes (infrequently) occurs when anaesthetics have a temporary effect on the brain, causing delusional behaviour. The policy sets out definite procedures that have to be implemented in these circumstances.

If you are a voluntary patient in a public psychiatric hospital or unit, and you want to be discharged before the hospital thinks you are ready to leave, the hospital can immediately make you an involuntary patient and force you to stay. To do this, the [procedure to make you an involuntary patient must be followed](#) and you would have to be [assessed to be 'mentally ill' or 'mentally disordered'](#). It is relatively easy for the hospital to argue in these circumstances that if you leave, you will put yourself at risk.

You do not have any right to stay in hospital past the time decided by your treating doctor, although, negotiation may be possible. Sometimes hospitals charge fees for what they call 'overstays' rather than physically throwing you out.

Post-discharge care, with your participation in its planning, is an essential part of overall care and treatment. Failure to provide adequate discharge planning may be a breach of standards of care.

3C.3: Who makes the decisions about your health care in hospital

Ultimately, because of the principle of informed consent, it is you (as the patient) who makes the final decisions about your health care in hospital.

However, this does not mean, at least in public hospital setting, that you can demand whatever treatment or care you want.

The medical team of a public hospital make the decisions about what health care will be recommended and offered. If you are a public patient, even if a private doctor has admitted you for treatment, these decisions are still made by hospital staff.

It may be good practice for the hospital to consult your GP or specialist, but ultimately these decisions are made by the hospital. This applies even if your usual doctor disagrees with what is proposed. In reality, it is only when you are discharged from hospital that you become their patient again.

If you have private hospital insurance or have the money to pay for a hospital stay, you can be a private patient in a public hospital. In this case, your private doctor is the treating doctor and makes the decisions. People with health insurance often choose to be treated as a private patient in a public hospital to avoid waiting lists for operations and procedures.

Decisions that doctors and other health care professionals make about your treatment and care have to be made to the appropriate standards. If sub-standard decisions are made (including decisions about diagnoses, which tests and scans to conduct and when to operate) these could be a breach of the health care professional's duty of care. If the decisions are very different from accepted standards, this could lead to disciplinary action against the health care professionals involved.

These principles about the standard of decision-making apply to psychiatric hospitals (private or public) whether you are a voluntary patient or an involuntary patient. The clear exception to this is that, even though an involuntary patient still must be informed of the consequences of particular treatment, [their consent is not required to carry out the treatment](#).

3C.4: Maintaining partner, family and community relationships and fulfilling sexual needs

If you are in hospital, you have the right to have your mail delivered to you and sent for you. There would have to be a strong reason related to your medical condition or potential for serious risk of harm to justify mail being opened before you are given it.

You have the right to have visitors and phone calls. You have the right to have an advocate of your choice (separate to legal advocates) who can help with things like asking questions about your medication and treatment.

Hospitals do have the right to temporarily or permanently exclude visitors because there is a security concern and/or there is a risk of harm related to such visits. If this happens, the only way to challenge the decision would be through [complaints processes](#).

You have a right to privacy and to be treated with dignity and respect. Sexual rights are identified as privacy rights. According to the World Health Organisation, in order for sexual health to be achieved and maintained, the sexual rights of everyone must be respected, protected and fulfilled.

Your rights to sexual contact with your spouse or partner can be very difficult to have fulfilled in a hospital. Hospitals, by their very nature, do not offer you, as a patient, the privacy you enjoy in your own home.

It is not impossible for hospitals to create environments where patients can enjoy sexual intimacy in private. However, there is a relative lack of privacy in public psychiatric hospitals and units because observation is seen as part of care, treatment and control of involuntary patients.

The NSW Health publication *Guidelines for the Promotion of Sexual Safety in NSW Mental Health Services* (2nd edition) appears contradictory on this issue. While the Guidelines clearly state that 'All people have the right to engage in consensual sexual activity', they also state that 'sexual activity in acute inpatient units' is 'inappropriate and unacceptable'.

The policy goes on to say:

'Flexible policy will need to be developed according to local need; for example, sexual activity between consenting adults in a residential setting may be acceptable, while in other settings this may not be considered appropriate.'

[Click here for the *Guidelines for the Promotion of Sexual Safety in NSW Mental Health Services \(2nd edition\)*.](#)

There is nothing in the *Mental Health Act 2007* (NSW) that says your right to engage in consensual sexual activity is taken away if you are an involuntary patient.

3C.5: Unwanted sexual contact in public hospitals

Sexual assault, including unwanted or unwelcome sexual contact, is illegal in hospitals as it is everywhere in Australia.

You should report any unwanted sexual advances by other patients or staff to senior hospital staff.

Most importantly, any sexual advance, sexual touching or even sexually weighted language (whether with your consent or not) by hospital staff is considered a violation of professional boundaries. If you report such behaviour, you should not be blamed or get into any sort of trouble. A report should lead to an investigation and, if proved, to internal and external disciplinary action against the staff member. Such behaviour is considered an even more serious violation if it happens to you when you have mental health problems.

If your complaints of unwelcome sexual behaviour are ignored, you should ask the hospital to contact the police as soon as possible, or contact them yourself if you can. Otherwise, contact the [Health Care Complaints Commission](#) on 9219 7444 or 1800 043 159*, which will treat such a complaint as very serious.

The NSW Rape Crisis Centre has a 24-hour telephone helpline: 1800 424 017* and an online counselling service. [For more information or to use the online counselling service, click here.](#)

*Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

3C.6: Obligations: occupational health and safety issues

When patient rights are discussed, some people want to emphasise patient obligations. These are often commonsense obligations focusing on the need for everybody in a health care setting to treat everybody else in that setting with respect.

Because hospitals, aged-care facilities, clinics and community mental health centres are also workplaces and public places, they are also subject to occupational health and safety considerations and general safety considerations applying to any public place.

Occupational health and safety laws protect employees from being exposed to unsafe work conditions and unsafe work practices.

The reality is that one of the possible threats to health care worker safety is violence from other people (patients, fellow workers or visitors). This has led NSW to introduce a 'zero tolerance' policy towards violence in the health care workplace. Significantly, this policy includes 'verbal abuse' in the definition of violence. [Click here to see the policy.](#)

If you are considered to be violent or verbally abusive you can be refused treatment, and if necessary, removed from the premises by security staff.

If you are violent and/or disruptive over a period of time, and/or:

- attend a health care service for treatment while you are affected by alcohol or other drugs;
- attend with groups of friends or relatives who significantly disrupt the treating environment;
- attend with a person or people who have a history of violent behaviour towards staff or others;
- attend in a violent manner late at night or at change of shift times disrupting the treating environment; and/or
- regularly threaten, attempt or commit violence against staff or others;

then, according to the policy, you can be asked to sign a conditional treatment agreement.

These agreements can include the following:

- clearly set out requirements for your behaviour;
- who must be with you, for example, a friend or relative, when you attend for treatment;
- who must not be with you when you are being treated or visit you when you are an inpatient; your condition and the condition of those accompanying you, for example, that you must not be affected by alcohol;
- where you will receive treatment.

If you don't follow that agreement, treatment can be refused altogether.

Sometimes, particularly when someone is upset (or unwell), what he or she sees as putting his or her legitimate complaints forcefully may seem to others as verbal abuse.

You should be very careful to not cross the line between legitimate complaints and abusing staff or others.

You should be particularly careful of loose talk that can be misinterpreted as a threat of violence. Comments like 'I will kill the nurse who mixed up my medication' or 'I will get the person who scheduled me' are very likely to be interpreted and dealt with as a threat of violence, not just a turn of phrase.

The golden rule should always be: think before you speak!

This Manual has a section on [how to make an effective complaint](#). One of the tips there is to, if possible, put your complaints in writing rather than making them verbally. If you don't think you can make a complaint verbally without getting very angry or upset, this is a very good reason to put it in writing or get an advocate to help you to make the complaint. Of course, you also should not write anything that can be interpreted as a threat or could be interpreted as abusive.

If you have a legitimate complaint but you are verbally abusive or threatening, this often has the effect of letting the person or body you are complaining about 'off the hook', giving them something to complain about you. On the other hand, if you are as calm and as polite as you can be, it is much more difficult to dismiss or not deal with your complaint, concern or question.

3C.7: Smoking

One particular occupational health issue that affects patients in psychiatric hospital and units is the ban on smoking.

Until recently patients were not allowed to smoke in enclosed areas, but were allowed to smoke in outside areas if it did not affect other patients or staff. There is now a complete ban on smoking in all NSW Health facilities, including psychiatric facilities where both voluntary and involuntary patients are getting treatment and care.

NSW Health policy is to provide patients with nicotine replacement therapy (NRT) and/or information on how to quit.

The ban on smoking in enclosed areas and near other patients, staff and visitors can be justified, both legally and ethically, as protection of others from harm, particularly given the increasingly understanding of the extent of harm potentially caused by 'passive smoking'.

The total ban on smoking in all parts of NSW Health facilities, including open areas, is justified on the ground that preventing people smoking has long-term health benefits to the whole population.

For individuals, even people who are forced to be located in facilities with total smoking bans, such as involuntary patients, there is no way to ask for an exemption from the ban. There is no recognised 'right to smoke' in any Australian law or current international standard or treaty that applies to public hospitals.

A reverse of the ban or the introduction of exceptions to the ban could only come about through a change in NSW Health policy.

3C.8: Food in hospitals

One thing that causes a lot of concern to people getting hospital-based health care treatment is the quality (including nutritional quality) of food served in public hospitals.

Complaints about hospital food should firstly be made to the hospital or unit. The Health Care Complaints Commission will not normally deal with complaints about food because such complaints are not considered as complaints about health care.

The NSW Food Authority sets standards for food, including hospital food, in NSW. Under the Vulnerable Persons Food Safety Scheme, the Authority conducts regular reviews of hospital food preparation systems and has strict requirements about how different types of food can be handled, prepared, transported and stored to minimise the risk of food poisoning. [Click here to find out more about the Scheme](#).

The NSW Food Authority only looks at food safety issues such as hygiene in the hospital kitchens and possible contamination of hospital food. They do not deal with complaints about the quality of the food or its nutritional value. [Click here to go to NSW Food Authority's website](#).

The Authority can be contacted at:

Telephone: 1300 552 406

Fax: (02) 9647 0026

E-mail: contact@foodauthority.nsw.gov.au

Postal address: Consumer & Industry Contact Centre,
c/- NSW Food Authority,
PO Box 6682,
SILVERWATER NSW 1811

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Part 3 Section D: Rights in private hospitals

Most of your rights and obligations in private hospitals are the same as those that apply in [public hospitals](#).

In this section you can find out more about:

- [private health insurance](#) ;

- [involuntary patients in private hospitals](#); and
- [difficulties that may arise from behaviour that is seen as inappropriate in a private hospital](#).

3D.1: Private health insurance

Most patients in private hospitals are getting care and treatment that is paid for by private health insurers. In this situation, your right to particular health care, without having to pay extra, depends on the terms of your private health insurance policy.

If you have concerns, questions or complaints about private health insurance, you can contact the Private Health Insurance Ombudsman (PHIO) between 9.00 am and 5.00 pm, Monday to Fridays:

Complaints Hotline: 1800 640 695* (free call anywhere in Australia)
 Telephone: (02) 8235 8777
 Facsimile: (02) 8235 8778
 E-mail: info@phio.org.au
 Website: <http://www.phio.org.au>
 Street address: Level 7, 362 Kent Street,
 SYDNEY NSW 2000

[Click here to visit the Private Health Insurance Ombudsman website](#)

PHIO also manages the website PrivateHealth.gov.au where you can find out about private health insurance and search for and compare selected features for all private health insurance products offered in Australia.

*Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

3D.2: Involuntary patients in private hospitals

Private hospitals can treat involuntary patients under the *Mental Health Act 2007* (NSW). To do so, the NSW Government must have approved the private hospital for this purpose. [The same procedure applies for you to be made an involuntary patient in a private hospital as in a public hospital](#).

There are currently no private hospitals in NSW with approval to treat involuntary patients under the *Mental Health Act 2007* (NSW).

3D.3: Behaviour in a private hospital

If a private hospital does not like the way you are behaving or your conduct, it is allowed to ask you to leave. Private hospitals are less likely to be tolerant of what they consider to be disruptive behaviour than public hospitals. Arranging admission to another private facility in these circumstances is likely to be difficult, however unfairly you think the first hospital has treated you. The only alternative could be to be admitted to a public psychiatric hospital or unit.

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Part 3 Section E: Access to health care

This section describes the different ways that medical treatment can be accessed in Australia. It includes information on:

- [Medicare](#)
- [Access to medical treatment for non-citizens](#)
- [Paying for medication \(prescription drugs and pharmaceuticals\)](#)
- [Access to dental care](#)
- [Access to allied psychological services](#)
- [Access to health care services by young people](#)

3E.1: Medicare

Medicare is designed to provide universal health care for Australians. Universal health care means that those people who are eligible for Medicare can always access health care that is free or provided at a low cost. This section on Medicare has information on:

- [Who is eligible for Medicare?](#)
- [What kinds of medical treatment does Medicare pay for?](#)
- [What medical or health care services does Medicare not pay for?](#)
- [How does Medicare work?](#)

3E.1.1: Who is eligible for Medicare

People who live in Australia—excluding Norfolk Island—are eligible for Medicare if they:

- are Australian citizens; or

- have a current permanent visa to be in Australia; or
- are New Zealand citizens; or
- have applied for a permanent visa (excluding a parent visa), (there are conditions on this entitlement to Medicare; contact Medicare for further information on 132 011).

3E.1.2: What kinds of medical treatment does Medicare pay for?

Medicare pays all or part of the costs of a range of health care services including:

- public hospital treatment;
- consultation with doctors, including specialists;
- tests and examinations needed by doctors so that they can diagnose and treat illnesses, including X-rays and pathology tests;
- eye tests performed by optometrists;
- most surgical and other therapeutic procedures performed by doctors;
- some surgical procedures performed by [approved dentists](#)
- specified items under the [Cleft Lip and Palate Scheme](#)
- specified health services as part of the [Enhanced Primary Care \(EPC\) program](#) (call Medicare on 132 011 for more information).

You can choose who provides you with health care services outside hospitals.

Medicare pays the cost of most consultations and procedures with your GP. The doctor can usually tell you whether or not the consultation or treatment you need will be paid for by Medicare. If you are in doubt, you should ask before the consultation with the doctor begins.

For more information call Medicare on 132 011.

3E.1.3: What medical or health care services does Medicare not pay for?

Medicare does not cover the costs of such things as:

- patient care and treatment in private hospitals or as a private patient in a public hospital (for example, theatre fees or accommodation);
- dental examinations and treatment (except specified items introduced for allied health services as part of the [Enhanced Primary Care \(EPC\) program](#)) (contact Medicare for more information);
- ambulance services;
- home nursing;
- physiotherapy, occupational therapy, speech therapy, eye therapy, chiropractic services, podiatry or psychology (except specified items introduced for allied health services as part of the Enhanced Primary Care (EPC) program). Contact Medicare for more information, phone: 132 011.
- acupuncture (unless it is done as part of the treatment provided by a doctor);
- glasses and contact lenses;
- hearing aids and other appliances; prostheses;
- [medicines \(except for the subsidy on medicines covered by the Pharmaceutical Benefits Scheme\)](#);
- medical and hospital treatment received overseas;
- treatments that someone else is responsible for paying for (for example, a compensation insurer, an employer, a government department or authority);
- medical services that are not clinically necessary;
- surgery solely for cosmetic reasons;
- examinations for life insurance, superannuation or membership of a friendly society.

For more information, call Medicare on 132 011.

3E.1.4: How does Medicare work?

Medicare either pays the cost of a health care service up front through what is called 'bulk billing' (see below) or will pay you back for all or part of the amount you have paid for health care services.

[You need to have a Medicare card to get the benefit of Medicare paying for the eligible medical treatments](#) . If for some reason you do not have a Medicare card, contact a Medicare office (phone 132 011). Medicare will replace lost or misplaced cards. Your Medicare card number is written on the card. Dependant children are usually listed also on their parents' card.

Some health care professionals (including GPs, specialists and others) 'bulk bill' Medicare for the costs of health care. This means that you won't have to pay anything when you get the health service or treatment. If the health care provider doesn't bulk bill, then you will have to pay at the time you get the health service or treatment or pay on account, and then make a claim to Medicare for some or all of the amount you paid. Health care providers don't have to bulk bill. Some health care providers only bulk bill pensioners and other Health Care Card holders. Most medical specialists do not bulk bill.

If a health care provider bulk bills, the provider or a staff member will take an imprint or the details of your Medicare card and ask you to sign a form with these details and the details of the health care service or treatment you received.

If a health care provider does not bulk bill, after you have paid the bill, you can take or send the receipt to a Medicare office with the completed claim form and you will be paid back an amount of the bill (this is called a 'Medicare rebate' and is based on what the Government has agreed to pay for each treatment; these are called the 'scheduled fees'). The health care provider should tell you how much of the bill you should get back from Medicare. This will almost certainly be less than you pay the provider.

If the receipt is not old, a Medicare office will give you the Medicare rebate in cash up to a particular amount. (Medicare offices vary as to their cash payment limit.) Medicare office needs to see your Medicare card to give you a cash rebate.

To find a Medicare office, click here <http://www.medicareaustralia.gov.au/public/claims/offices.jsp>

There are other ways to get your Medicare rebate.

You can be paid electronically and several ways through the post.

You can also have the Medicare rebate paid directly into your bank account. The process for doing this involves your health care provider, so you should ask about this when you see the provider.

Another option is for you to pay only the difference between the health care provider's fee and the Medicare rebate amount. This is done through the health care provider asking you to sign a claims form assigning your Medicare rebate to them.

For more information on Medicare rebate payment options, click here: <http://www.medicareaustralia.gov.au/provider/medicare/claiming/index.jsp - N100B9>.

or here: <http://www.medicareaustralia.gov.au/public/claims/how/index.jsp>

Health care providers can charge what they choose over and above the Medicare rebate amount (and the scheduled fee). Like any other service you get, you should ask how much you will be charged before you get the service.

For more information, call Medicare on 132 011.

3E.2: Access to Medicare and medical treatment by non-citizens

[Access to Medicare](#) to cover the cost of health care is granted to three groups of non-citizens in Australia:

- permanent residents;
- people waiting for completion of the processing of their permanent residency claims;
- citizens of countries with mutual care agreements with Australia: Finland, Great Britain, Holland, Italy, Malta, Ireland and New Zealand (citizens of Italy and Malta have access for up to six months).

Tourists and those with student visas from countries other than those with mutual care agreements have to pay the costs of any medical treatment they get, including stays in public hospitals.

Access to an ambulance and emergency medical treatment at a hospital emergency department is not denied to anyone in NSW. However, after any stay in hospital, a person who is not eligible for Medicare will generally be given a bill for the costs of their hospitalisation, emergency transport and medical treatment. Many tourists get health insurance before they travel to Australia to cover these costs.

3E.3: Access to allied psychological services

There are two schemes that will help cover the cost of getting psychological and allied services,

- [The 'Better Access' Scheme](#) ; and
- [The Better Outcomes – Access to Allied Psychological Services \(ATAPS\)](#) .

Access to both of these schemes begins with a visit to a GP.

3E.3.1: The Better Access to allied psychological services through the Medical Benefits Scheme (MBS)

Medicare will cover the cost of people with a mental disorder getting up to 18 individual allied mental health services each calendar year. In order to access this benefit, you must be referred for the allied mental health treatment by a GP under a GP Mental Health Care Plan, through a psychiatric assessment and management plan, or by a psychiatrist or paediatrician.

The services that can be accessed under this scheme include psychological therapy services provided by eligible clinical psychologists and focused psychological strategy services provided by eligible psychologists, social workers and occupational therapists.

Like other Medicare-funded services, [the costs may be bulk billed by the health care provider](#) but a provider may also charge you a fee and you will only get a percentage back as a rebate from Medicare.

If you cannot afford to pay the fee for the service up-front, tell your GP or referring health care professional that you only want to be referred to someone who will bulk bill. (This may make it more difficult to access this scheme, as health care professionals who bulk bill may be limited in your area.) Your GP or referring health care professional could also refer you through the Better Outcomes – [ATAPS scheme](#) that only bulk bills for services.

The Australian Psychological Society has a fact sheet with more detail on the Medical Benefits Scheme (MBS) from the perspective of a service user. [Click here to read the fact sheet](#).

3E.3.2: 'Better Outcomes' – access to allied psychological services (ATAPS)

GPs can refer people with diagnosed mental disorders to allied mental health care providers through the ATAPS scheme.

This scheme is targeted at low-income earners and all the available services are bulk billed through Medicare.

There are ATAPS programs run by most Divisions of General Practice in NSW. These have been designed to meet local needs and vary in their referral processes and eligibility criteria. For further information about a program in your area, contact your local Division of General Practice. [Click here to find your local Division of General Practice](#).

ATAPS programs usually provide 12 free sessions with a psychologist, a psychiatrist or a GP over a period of one year.

Allied health care professionals include psychologists, social workers, mental health nurses, occupational therapists and Aboriginal and Torres Strait Islander health workers with specific mental health qualifications.

3E.4: Access to health care services by young people through Headspace

Headspace one-stop-shops provide free access to the following services for young people (12 to 25 years old):

- General health care services
- Mental health and counselling services
- Education, employment and other support services
- Alcohol and other drug treatment services

You may not need a Medicare card to see a doctor or get other services at Headspace. You are likely to be asked for a Medicare card to get psychological services.

[Click here to go to Headspace website or to find the locations of Headspace One-Stop-Shops.](#)

3E.5: Paying for medication (prescription drugs and pharmaceuticals)

The Pharmaceutical Benefits Scheme (PBS) provides for prescription medications at a subsidised (reduced) cost in Australia. However, not all prescription medications are on the PBS list of subsidised drugs.

[The eligibility is the same as for Medicare](#) and you may be required by a pharmacist to produce a Medicare card to get subsidised medicine under the PBS.

The most you can be charged for one prescription for any medication that is approved under the PBS is \$32.90.

Some people are eligible for a concessional benefit that means they pay \$5.30 for most prescription medications. To be eligible for a concessional benefit, you must have one of the following concession cards:

- Pensioner Concession Card;
- Commonwealth Seniors Health Card;
- Health Care Card; or
- Department of Veterans Affairs (DVA) White, Gold, or Orange Card.

Some medicines are sold under more than one name, although they are the same medication for the same conditions. Some of these are called 'generic medicines' and often are less expensive than the other medication with a more familiar brand name, even on the PBS. You may want to ask either your doctor or the pharmacist when you are prescribed medication whether there is a cheaper generic equivalent.

[For more information on the PBS, click here to go to its website](#) or call the Department of Health and Ageing PBS Information Line on 1800 020 613*. The PBS Information Line is open Monday to Friday from 8.30 am to 5.00 pm.

*Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

3E.6: Access to dental care

One of the exceptions to universal access to health care in Australia is dental care.

Private dentists and dental technicians provide most dental care in Australia on a fee-for-service basis. There are limited circumstances in which a person can get free or subsidised dental treatment. These are described below.

3E.6.1: Paying for dental care

As with other private health services, there is no regulation of what a dentist may charge you for their services.

Always make sure when you see a private dentist that you know what they are going to charge you. If you are seeing a dentist for complex work with a large fee, it is strongly recommended that you ask for a written quote before the treatment is started. Some private dentists offer the first consultation (not treatment) for free.

3E.6.2: Free and public dental care

In NSW, children and people with a Health Care Card are entitled to free public dental care. No one else can access free public dental care, even if you are working but have little spare money and no assets. [Click here to read about the Medicare Teen Dental Plan.](#)

Public dental clinics are usually located in or near large public hospitals.

There are long waiting lists, even for some urgent dental procedures, at the public clinics. If your situation becomes more urgent, and you are on a waiting list, you should tell the dental clinic of the change in your condition. Public dental clinics only do some dental treatments. If you need other treatments, your only option may be private treatment.

There is also a scheme operating that means that if you have a chronic health condition and urgent dental treatment is needed to complement your treatment for that condition, you can seek treatment from a private dentist and Medicare will pay for the treatment. To find out more about this scheme and the eligibility criteria, ask your GP or [click here to read more about it on the Department of Health and Ageing website.](#)

3E.7: Access to Schedule 8 drugs

Schedule 8 drugs are addictive drugs. The 'schedule' is in the NSW Poisons List and it refers to the Commonwealth *Standard for the Uniform Scheduling of Drugs and Poisons* (the Poisons Standard). [Click here to find out more about the Poisons Standard.](#)

Examples of Schedule 8 drugs are oxycodone, morphine, pethidine, amphetamine, methadone, and ketamine. They are usually prescribed for the relief of severe pain. These drugs can be prescribed by medical practitioners (and, in restricted circumstances, by dentists).

Drugs in other schedules of the Poisons Standard can also have special conditions on their dispensing and prescribing. This information can be obtained from doctors and pharmacists.

There are restrictions on the prescription of Schedule 8 drugs that people with mental illness should be aware of.

If you are a person known to be a 'drug-dependent person', then the doctor must have an authority from the Pharmaceutical Services Branch (PSB) of NSW Health to prescribe a Schedule 8 drug to you. These authorities are reviewed and renewed regularly.

If you are not a drug-dependent person, your doctor does not need to get an authority to prescribe you a Schedule 8 drug unless the drug is packaged for the purpose of injection or is:

- buprenorphine (except transdermal patches); or
- flunitrazepam; or
- hydromorphone; or
- methadone.

A doctor cannot prescribe any of these four drugs for more than two months without getting an authority from the Pharmaceutical Services Branch.

Some doctors, either through ignorance of the law or for other reasons, do not comply with these requirements. If they don't comply, and then are found out, and have been prescribing you the drugs for more than two months, the Pharmaceutical Services Branch could take action (from not granting an authority for your drug prescription to suspending the doctor's authority to prescribe Schedule 8 drugs to anyone) that could mean that you will no longer be able to get a prescription for the drug from that doctor.

In this circumstance, it may be difficult to find another doctor willing to prescribe the drug, and get the necessary authority, particularly at short notice.

This means that if you think your doctor should be getting an authority for a drug that he or she is prescribing to you, then it is best to raise this matter with the doctor after two months of prescribing. Otherwise, you could find yourself further down the track trying to convince doctors who don't know you or your history, to prescribe a drug of addiction for your urgent needs. This would be difficult because medical practitioners are regularly told by the authorities to be wary of '[doctor shoppers](#)', that is, people who go from doctor to doctor to get prescriptions for (mainly addictive) drugs, either for their own use or sale.

It is important to remember that there is no legal obligation on any doctor to treat you (except when they are confronted with extreme life-threatening emergencies), and a doctor does not have to prescribe you any medication, despite the fact that another doctor or doctors may have said it is necessary for your medical condition or pain relief.

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Part 3 Section F: Standards of care

Anyone who is cared for and treated by a health care professional or a health care provider has to be cared for and treated to the appropriate standard of care.

Standards of care come from various sources and cannot be found written in one place.

In this section you can find out more about:

- [Standards of care generally](#); and
- [Breaches of the *Mental Health Act 2007* \(NSW\) and relevant standards](#)

3F.1: Standards of care in general

NSW Health has written policies and protocols and these form part of the standards for public health care providers in NSW and health care professionals that work within the health care system. The NSW Health Suicide Prevention Protocols are a good example of this type of standard.

All health care professionals in NSW (for example, doctors, nurses, dentists, pharmacists) are regulated by separate Acts of Parliament (and Regulations) that deal with their registration and provide for the maintenance of standards. Some health professions have codes of conduct for their profession. Specialist medical practitioners also have 'colleges', which have written standards of practice.

If a health care professional is subject to disciplinary proceedings, his or her conduct will also be subject to 'peer review' by health care professionals working at the same level, and with the same level of experience and authority. Peer review is done to assess whether or not the conduct met the standards for their profession.

Standards of care are different to 'best practice' and usually a health care professional is only subject to disciplinary proceeding if they 'significantly depart' from the relevant standards. A health care professional might have made a mistake, but not necessarily be found to have significantly breached standards.

Here it must be noted that a breach of a standard of care in the civil law (relevant if you are taking legal action in the courts for compensation) would be tested using a similar but nevertheless different test from a breach of professional standards. A mistake by a health care professional could be 'negligence'

in the civil law but not a significant departure from standards in disciplinary proceedings.

A health care professional is much more likely to face disciplinary proceedings for a breach of standards if he or she makes the same mistake or carries out the same unethical conduct more than once, despite warnings. Civil claims for compensation are usually about one particular incident of negligent conduct that has caused significant injury and loss to the person bringing the case.

If you make a complaint, in particular to the [Health Care Complaints Commission \(HCCC\)](#) about things that happen to you in hospital or with your contact with health care professionals, these are all issues that the HCCC will look at to decide what to do about your complaint.

3F.2: Breaches of the *Mental Health Act 2007* (NSW) and standards

The *Mental Health Act 2007* (NSW) has sections that set how you are to be treated if you are an involuntary patient in NSW.

These sections of the Act deal with things like:

- Notices you require for involuntary detention hearings by [a single member of the Mental Health Review Tribunal](#) and hearings [by the full Mental Health Review Tribunal](#);
- [How you should be presented to these hearings](#);
- Your involvement in treatment and discharge plans;
- [Notices about your rights as a patient generally](#);
- [What must happen if you are being discharged from hospital](#).

However, it is important to note that there are no penalties set out in the *Mental Health Act 2007* (NSW) if these things don't happen. There is no court, tribunal or other forum you can approach if you believe these requirements have not been followed (that is, the requirement has been 'breached'), except for general complaints bodies. You can raise these matters with a single member Mental Health Review Tribunal or the full Mental Health Review Tribunal, but these bodies have no power to separately deal with such breaches of the *Mental Health Act 2007* (NSW). Raising these issues with them hopefully might persuade the Tribunal to make a (non-enforceable) recommendation or comment.

If these sections of the *Mental Health Act 2007* (NSW) are breached and you complain, the sections will in fact be treated the same as standards. Proving that someone has not done what they are meant to under these sections of the Act will not necessarily guarantee that a member of staff is disciplined, either internally, or through the more formal professional disciplinary process referred to in the [separate section on standards of health care](#).

This does not mean that complaining about breaches of the *Mental Health Act 2007* (NSW) won't have any effect. Complaints often lead to changes in the behaviour and conduct of health care professionals and the practices of health care providers, and can have very positive outcomes. However, such outcomes cannot be guaranteed, and if your complaint is dealt with through a process internal to the health care provider, you will not (for privacy reasons) be told whether a health care professional has been disciplined or counselled. The NSW Government's policy of 'open disclosure' does, however, encourage public health care providers to give feedback to people who have made complaints about any systemic change that has come about because of their complaint, and to apologise and explain when mistakes are made.

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Part 3 Section G: Confidentiality and privacy

Long before there was a specific Act of Parliament about privacy, there was a principle that records kept by health care professionals should be kept confidential.

There have always been exceptions to this principle, in particular when a party to a legal case in court asks through the court process ('issues a *subpoena*') for medical records that are relevant to the court case.

A failure to keep health records confidential may be a breach of confidentiality. It may also be a breach of specific privacy laws.

This section deals with:

- [Breach of confidentiality in relation to health care](#)
- [Specific privacy laws](#)

3G.1: Breach of confidentiality in relation to personal health information

If you think a health care practitioner or a health care provider has breached the confidentiality of your health records or of any discussions you have had with them as part of your treatment and care, you can complain to the [Health Care Complaints Commission](#).

You may, particularly if you suffer financial loss as a result of breach of confidentiality, also be able to take legal action in court for breach of confidentiality. The law is developing in this area, and there have been calls for new laws to give individuals a right to take legal action for breach of privacy.

Breach of confidentiality of patient records is usually dealt with as part of the disciplinary process for health care professionals such as doctors, dentists and pharmacists.

To find out more about where to get advice about your options to complain about a breach of confidentiality in relation to your health care, click [here](#).

3G.2: Specific privacy laws

In Australia, there are specific pieces of legislation ('Acts' made by parliaments) that protect the privacy of personal information.

Generally speaking, Australian privacy laws are about how your personal information may be handled. For example, the *Privacy Act 1988* (Cth), which applies across Australia, covers:

- when and how your personal information is allowed to be collected, for example, the personal information you provide when you fill in a form;
- how it can then be used and disclosed;
- how its accuracy is to be maintained;
- how securely it is to be kept;
- how long it can be kept;
- your general right to access that information and correct any errors.

These are set out in privacy principles.

Since 2001, the *Privacy Act 1988* (Cth) has applied to the private sector as well as the public sector and in particular to health information, which includes medical and hospital records. The NSW Parliament has also passed a law that applies to health information in both the private and public health care sector in NSW, this is the [Health Records and Information Privacy Act 2002 \(NSW\)](#).

This Act applies to health information, which is considered 'sensitive information' and which requires extra protection under privacy law.

3G.2.1: Privacy principles

The *Privacy Act 1988* (Cth) includes [Information Privacy Principles](#) that apply to the Federal Government and [National Privacy Principles](#) that apply to the private sector, and in NSW there is also a set of [Health Privacy Principles](#) that form part of privacy law. These principles are not rigid but if you think a person or an organisation has not followed them, then you can complain to either the Commonwealth Privacy Commissioner or Privacy NSW.

If you think a health care provider has breached privacy principles in relation to your personal health information, you can complain. To find out more about privacy complaints, click [here](#)

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Part 3 Section H: Access to health records

This section provides information about what rights you have to access your health or medical records, what limits there are on these rights, how to exercise your rights and other related issues.

There are sections on:

- [Your right of access to your health records](#)
- [Moving your health records from one health care professional to another](#)
- [Keeping of your health records by your doctor](#)
- [Exceptions to your right of access to your health records](#)
- [Right to have information on your health records corrected](#)

3H.1: Right to access your health records

You have a right to access your health records held by a health care professional, such as a doctor or dentist, or held by a health care provider, such as a hospital, clinic or community health service.

The right that people in NSW have to access their health records comes from several sources. There are both Commonwealth and NSW Acts of Parliament about information privacy giving you access to records held by both [private and public health care providers](#). In NSW, you can also access medical and hospital records held by NSW Government bodies such as public hospitals and community health centres using [freedom of information \(FOI\) law](#).

Usually the actual record, that is, the paper, the folder, the CD, etc, is kept by the health care professional or health care provider who made the record or who holds the record.

Getting access to your health record usually means the person or body holding the record gives you a copy. If you get access to your records this way, you may have to pay for the costs of making and sending you the copy.

Right of access can also mean that you are allowed to look at the original record at the office of the holder of the record. Sometimes, with private doctors, you may be only given a summary of the records.

If you ask for a copy of your public hospital records in NSW, you are likely to be asked to make an [FOI application for access](#) . Every public hospital has a records department that deals with FOI applications. They have a set fee for applications, with a discount rate for Health Care Card holders.

Not only do you have a right to access your records, these days it is considered 'best practice' for all those providing a health care service to be open about what is recorded on the patient's medical record.

If you think or have been told that a private health care provider is reluctant to give you a copy of your records, it is probably best to put your request in writing, stating very clearly the records you want to access, and how you want to access the records, ie, photocopy, a viewing, etc. If the health care provider refuses to give you access, you should also ask for the reasons for this refusal in writing.

You only have a right to access records made by private health care providers after 2001 (when the *Privacy Act 1988* (Cth) was expanded to include the private sector).

There are exceptions to the right of access, click [here](#) to find out about the exceptions.

For more about making an FOI application for access to your health records held by public health care providers, click [here](#).

For more about accessing your health records using privacy law, click [here](#).

3H.1.1: Right to access health records held by public health providers

Every large or medium sized public hospital has a medical records department that deal with patients' applications to access their own health record. Some medical records departments may have their own records request forms. Others may deal with a verbal request if you produce some ID. In all circumstances, you will need to produce ID to access your records.

If the public health provider is separate to a hospital or too small to have a medical records department, you should ask the manager of the service where you can apply to get a copy of your records.

Depending on the size of the documents you request, there is usually a fee. There is usually a set fee for applications for records of less than 80 photocopied pages, with a discount rate for Health Care Card holders.

Not only do you have a right to access your records, it is considered 'best practice' for all those providing a health care service to be open about what is recorded on a patient's medical record.

There are certain situations where the law allows access to records to be refused. These are exceptions to the right of access. [Click here to find out about the exceptions](#).

The treating health provider might consider access to your records could be 'prejudicial to your physical or mental health'. In this situation your health record can be sent to an independent third party, such as your GP. This will not guarantee either you getting to see your records, or even being able to discuss them with your GP. The GP can then discuss the records with the health provider, and then provide you with all or some of your records.

In NSW, you can also access medical and hospital records held by NSW Government bodies such as public hospitals and community health centres using the *Government Information (Public Access) Act 2009* (NSW) (GIPA Act). This used to be called 'freedom of information' (FOI).

The GIPA Act provides an alternative way to access your health information. The rules under the GIPA Act are similar to those under Privacy laws. This includes similar rules about the limited ways access [can be refused](#). An appeal on a refusal of access under GIPA is unlikely to provide a different outcome to an appeal under privacy legislation.

You would also use GIPA when you are seeking information from a hospital or other health provider, other than your own [personal health information](#).

3H.1.2: How to access health records held by private health care providers

If you want to access your medical record held by a private health provider, you should start by asking the health care provider to show or give you a copy of your medical record.

In limited circumstances, a GP or another doctor holding the records can refuse to give you access; these are called exceptions to the right of access. Click [here](#) to find out about the exceptions.

If the health care provider refuses or you are not happy with the amount of information you are given or believe that the record is incorrect in some way, you should speak to the health care provider to try to sort this out.

If this does not work, you might then write to the health provider, keeping a copy of the letter. If that does not resolve your concerns, you may be able to make a privacy complaint. To find out more, click [here](#).

As occurs when you seek to move or transfer your records to a different health care provider, you can be charged an administrative fee if photocopying, searching and/or carriage/ postage is involved. ([Old records may be kept off site, in storage](#)).

3H.2: Review and appeals

You can ask for a review of any decision to refuse you access to your health records.

To find out what you can do if your application for access to your records under privacy law is refused, click [here](#).

To find out what you can do if your FOI application for access to your records is refused, click [here](#).

3H.2.1: Privacy laws

If a private health care provider refuses to give you access to your medical records you can complain to either the Commonwealth Privacy Commissioner or the NSW Privacy Commissioner. If you do not get what you want through the NSW Privacy Commissioner, you can take your request to the Administrative Decisions Tribunal. This process only applies to requests under NSW privacy law.

Often, the staff of the Privacy Commissioners (Commonwealth and NSW) can help you get what you want by talking to the doctor or health care provider. However, if this does not work, it can take some time before the Administrative Decisions Tribunal can deal with your request. If you want or need access to your health information urgently, you may have to negotiate and compromise. Sometimes doctors will agree to provide your records to another doctor who can discuss them with you. If you are simply changing doctors and want your records to give to your new doctor, sometimes your previous doctor will be more willing to send a copy directly to the new GP, rather than give you a copy. Also, more than one doctor or health care provider may have a copy of the same documents that you urgently want.

The Office of the Privacy Commissioner (Commonwealth), in particular, has lots of information available on the Internet about health information privacy, as well as how to make a complaint. [Click here to go to its website](#). The Office of the Privacy Commissioner (Commonwealth) can be contacted by phone on **1300 363 992**.

The NSW Privacy Commissioner can be contacted on **02 8688 8588**. [Click here to go to the NSW Privacy Commissioner's website](#).

3H.2.2: Freedom of information law and accessing information

In NSW most public health records in the past were accessed through Freedom of Information (FOI) legislation. Since late 2010, access under FOI has been replaced with the *Government Information (Public Access) Act 2009* (NSW) (GIPA).

NSW Health and Local Health Networks (formerly the Area Health Services) now encourage applications for access to health records to be made under the right to access in privacy legislation.

you will still need to apply through GIPA if you want information other than information about your own health and treatment.

There is still Commonwealth FOI legislation, but again, if the information you seek is about you and your health treatment, and is held by a Commonwealth public health provider, you should apply for access under privacy laws, rather than FOI.

For example you can access information held by Medicare under both FOI and Commonwealth privacy legislation. For more information about accessing information held by Medicare, [click here](#).

For more information about Commonwealth FOI, you can contact the [Commonwealth Privacy Commissioner](#).

For more information about GIPA, you can contact the [NSW Privacy Commissioner](#).

3H.3: Moving your health records

If you are changing health care providers (within the same part of the health care profession, eg, moving from one GP to another), they will usually, with your written consent, pass a copy of your records to your new health care provider. They can ask you for a 'reasonable' fee to do this (called an 'administrative fee'). Some health care providers have a set fee, so it doesn't matter how many pages are in the records. A set fee is permitted so long as the fee is not excessive. If you can't afford the fee suggested, you could try to negotiate with the health care provider, setting out why you can't afford the fee. Alternatively, if the fee is large because of the amount of documents involved, you should talk to your new health care provider about what records are absolutely necessary for your ongoing health care.

3H.4: Keeping records and getting access to records that are more than seven years old

Health care providers must keep copies of medical records for seven years (more for children).

Seven years after the last consultation you had with a health care provider, that provider can destroy the records made about your treatment and care.

Many hospitals and even some private doctors keep copies of their records much longer than seven years. The rule for health privacy and freedom of information is that if the health care provider has a record, you are entitled to access a copy of that record if it is about you. The exception is that you have no right of access under the *Privacy Act 1988* (Cth) to health records made before 2001. For information about other exceptions, click [here](#).

3H.5: Exceptions to the right of access

Under privacy laws, there are exceptions to the right of access that lets the holder of the information refuse to give you access to all or parts of your records.

The most common exception in the privacy principles is that access can be refused if letting a person see their records would pose a serious threat to the person's life or health, or the life or health of someone else (such as a relative, a health care provider, staff or other patients). If the holder of the record thinks you may be seriously affected by accessing information about your physical or mental health, then they can refuse your access to your health record.

Under the Commonwealth [privacy principles](#) the threat must be significant. An example would be where there is a serious risk that the person may harm himself or herself or another person if they saw the information.

The threat can be to physical or mental health, but does not need to be imminent; it can be a serious threat that would occur some time after access is granted.

Because of this exception, access to records held by psychiatrists or psychiatric hospitals is sometimes denied.

If you are refused access for these reasons, you can ask that a medical doctor or another health professional such as a nurse or a psychologist be given access to the information and talk to you about it. Private providers do not have to do this, but public providers in NSW such as hospitals and community health centres are encouraged to give access in this way. Taking this option however, will only give you some, not necessarily all, information from someone like your GP about what is in your records. It is unlikely that you will be given a photocopy of your records.

If your request to have someone like your GP give you limited access to information to your records is refused, you can ask for a review or appeal.

For more about asking for a review or appeal, [click here](#).

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Chapter 4 - NSW Mental Health Law and Processes

Part 4 Section A: Overview and objectives of the *Mental Health Act 2007 (NSW)* and the *Mental Health (Forensic Provisions) Act 1990 (NSW)*

The main purpose of the *Mental Health Act 2007 (NSW)* is to ensure the 'care, treatment and control' of people in NSW who are 'mentally ill' or 'mentally disordered' (these terms are defined in the Act and do not necessarily have the same meanings as elsewhere).

The objects of the Act also refer to voluntary and involuntary hospital treatment and to the involvement of people dealt with under the Act and their carers in decisions about 'care, treatment and control'. For more information for carers, click [here](#).

The *Mental Health (Forensic Provisions) Act 1990 (NSW)* sets out how criminal proceedings are dealt with in the Supreme, District and Local Courts when the defendant has a mental disorder. It also deals with mental illness as a legal defence in criminal cases, as well as with forensic and correctional patients, including setting out the role and powers of the Mental Health Review Tribunal in reviewing forensic and correctional patients.

This section provides a brief overview of key aspects of the *Mental Health Act 2007 (NSW)*, providing information on:

- [The meaning of the word 'control' in the Act and what authorities can do](#)
- [Main rights under the *Mental Health Act 2007 \(NSW\)*](#)
- [The principle of least-restrictive care](#)
- [Voluntary patients under the *Mental Health Act 2007 \(NSW\)*](#)

The rest of this part gives more detailed information about mental health law in NSW, covering the following topics:

- [Initial detention and transport under the *Mental Health Act 2007 \(NSW\)*](#)
- [Admission to hospital under the *Mental Health Act 2007 \(NSW\)*](#)
- [Compulsory treatment under the *Mental Health Act 2007 \(NSW\)*](#)
- [Right to maintain physical health when an involuntary patient](#)
- [Compulsory treatment in the community under the *Mental Health Act 2007 \(NSW\)*](#)
- [Rights and discharge under the *Mental Health Act 2007 \(NSW\)*](#)
- [Legal proceedings under the *Mental Health Act 2007 \(NSW\)**](#)
- [Complaints and advocacy services available to involuntary patients \(NSW\)](#)
- [Disclosure of information under the *Mental Health Act 2007 \(NSW\)*: role of the Primary Carer](#)
- [Mental illness and the criminal justice system](#)

* Since 21 June 2010, mental health inquiries under the *Mental Health Act 2007 (NSW)* have been conducted by the Mental Health Review Tribunal rather than by visiting magistrates. The Manual reflects this change.

4A.1: The meaning of the word 'control' and what authorities can do

The use of the word 'control' in the objectives section of the *Mental Health Act 2007 (NSW)* means that the Act is mainly about when and how a person with a mental illness can be compulsorily cared for and treated in NSW; that is, when authorities can suspend some, but not all, of the rights that people have in relation to their health care (as discussed in [part 3](#)).

This means that, if it is decided that you have a 'mental illness' or are 'mentally disordered' as defined in the Act, you can be:

- taken to a hospital or psychiatric unit against your will for further assessment;
- treated in hospital without you agreeing to this;
- stopped from leaving a hospital that you've been taken to, including being kept behind locked doors and forcibly taken back to hospital if you leave;
- placed on a Community Treatment Order when you are not in hospital care, and made to have regular treatment, usually medication.

This does not mean:

- you can be treated with sub-standard care or treated in a way by health care professionals or other hospital staff that does not meet ethical, professional and competency standards as well as NSW Health's published standards;
- you lose all your rights when you are in hospital; you may lose certain rights relating to your care and treatment for a mental illness so that the health care provider can assert the control needed to give you care and treatment if you don't consent;
- your needs because of your age, gender, religion, culture, language or other disability can be ignored.

4A.2: Main rights under the *Mental Health Act 2007 (NSW)*

If you are being dealt with under the *Mental Health Act 2007 (NSW)*, you have a right to be:

- given information about treatment, treatment alternatives and the possible effects of treatment;
- be involved in the development of your treatment plan and any plans for your ongoing care;
- told your legal rights under the Act in a language that you can understand.

The *Mental Health Act 2007 (NSW)* does not give you a right to be admitted to a mental health facility or to extend your stay (either as a voluntary or involuntary patient) if the treating doctors don't think it is clinically appropriate or necessary.

You can, in this situation, ask for a review by the 'Authorised Medical Officer' or the Medical Superintendent of the hospital where you want to be admitted. The official form for asking for this is called the 'Application to medical superintendent for review of decision of authorised medical officer'. [Click here to](#)

[download the form](#). The *Mental Health Act 2007* (NSW) does not say you have to put your request in writing, but it is better, if you can, to do so.

Also the decision to refuse to admit you can be reviewed by the Health Care Complaints Commission as it may raise a question of whether or not the hospital or a doctor has treated you with the appropriate standard of care. This could also be considered by a court as a result of you taking legal action.

4A.2.1: The principle of least-restrictive care

There is a principle under the *Mental Health Act 2007* (NSW) that mentally ill and mentally disordered people should get their care in the 'least restrictive environment enabling the care and treatment to be effectively given'. Finding the 'least restrictive environment' can mean that a person does not have to stay in hospital to get care and treatment. They may also get appropriate treatment in the community.

4A.3: Voluntary patients under the *Mental Health Act 2007* (NSW)

Although the *Mental Health Act 2007* (NSW) is mainly about involuntary treatment and admission, it also deals with 'voluntary patients'.

Since November 2010, the *Mental Health Act 2007* (NSW) was amended to provide for the reclassification of involuntary patients to voluntary patient status by the Mental Health Review Tribunal when conducting a review of an involuntary patient. This amendment enables the Tribunal to reclassify an involuntary patient if they are of the opinion that the patient is likely to benefit from care and treatment as a voluntary patient and agrees to be so classified. In addition, the Tribunal has been given the power to conduct reviews 'at such times as may be required by the Tribunal for the purpose of any review'.

The power to make a person voluntary patient is confined to involuntary patients and is therefore not applicable to assessable persons brought to Tribunal for a mental health inquiry.

[The rights and obligations of competent adult 'voluntary patients'](#) under the *Mental Health Act 2007* (NSW) are fundamentally the same as other adult patients in general hospitals.

There are, however, some differences:

- The Mental Health Review Tribunal must review voluntary patients every 12 months if they stay as a patient of a psychiatric hospital or unit.
- A voluntary patient can be made an involuntary patient at any time without notice if they are assessed as being mentally ill or mentally disordered under the definition in the [Mental Health Act 2007 \(NSW\)](#). Although many voluntary patients see this as unfair when it happens, the *Mental Health Act 2007* (NSW) says this can happen.
- A guardian can only ask for a person to be admitted as a voluntary patient if they have authority to make decisions under an 'accommodation, medical/dental function'.
- An 'enduring guardian' and a guardian appointed by the Guardianship Tribunal can also ask for a person to be made a voluntary patient. ([An enduring guardian is not the same as a person granted an enduring power of attorney](#)).

The *Mental Health Act 2007* (NSW) allows children under 16 to be admitted as voluntary patients by their parents. Where a person has a legally appointed guardian, the guardian may be involved in decisions about admission and discharge. For more about this, [click here](#).

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Part 4 Section B: Initial detention and transport under the *Mental Health Act 2007* (NSW)

There are various ways you can be taken against your will to a psychiatric unit or a public hospital for further assessment under the *Mental Health Act 2007* (NSW).

This section deals with the various ways a person can be admitted as an involuntary patient:

- [on certification from a doctor](#)
- [on certification from an accredited person](#)
- [on request from a relative](#)
- [by the police](#)
- [by an ambulance officer](#)
- [by order of the Local Court](#)
- [on a magistrate's order](#)
- [while under treatment as a voluntary patient](#)

The section also deals with your [Primary Carer being notified of your involuntary admission](#).

After you are taken to hospital there is an assessment process before you can be held as an involuntary patient. For more about this, click [here](#).

4B.1: Involuntary admission to hospital on certification from a doctor

The most common way of being admitted to hospital under the *Mental Health Act 2007* (NSW) is on the basis of a medical certificate or 'schedule', written by your GP or a doctor at another hospital who has seen you and thinks you need to be in hospital.

The certificate can only be written if the doctor has observed or examined you, is not a near relative of yours (or your Primary Carer), and considers you to be a mentally ill person or a mentally disordered person as defined in the Act.

If a doctor thinks you should go to hospital, you can agree to get there yourself or with help from friends or relatives. If you cannot organise this, an ambulance may be arranged or the police may be asked to take you to hospital.

4B.2: Involuntary admission to hospital on certification by an accredited person

The *Mental Health Act 2007* (NSW) allows the NSW Government to appoint 'accredited persons' who are not doctors. Accredited persons are authorised to write the first document (the 'initial schedule') that allows you to be taken, against your will if necessary, to a psychiatric unit or hospital. These accredited persons have to undergo specific training before they can be appointed.

The appointment of accredited persons is available so that in rural and remote areas, where there are often no doctors available at short notice, there is a way for a person to be initially detained under the *Mental Health Act 2007* (NSW) in an emergency.

4B.3: Involuntary admission to hospital on request from a relative

In country areas, it often is very difficult to get a doctor to come and see you. If a relative or friend brings you to a declared mental health facility first they can then make a written request to the Authorised Medical Officer that you be involuntarily admitted.

[A family member or friend can also ask a magistrate in the Local Court to order this to happen.](#)

4B.4: Involuntary admission to hospital by the police

The police can take you to a psychiatric hospital or unit against your will if they come in contact with you and they:

- believe that you are mentally ill or mentally disordered as defined under the *Mental Health Act 2007* (NSW); and
- believe that you have recently attempted to kill yourself or are about to; or
- believe that you are committing or have recently committed an offence. (Police can enter your home without a warrant to do this).

[Police can also be ordered by a magistrate to take you to hospital.](#)

4B.5: Involuntary admission to hospital by an ambulance officer

If an ambulance officer believes on reasonable grounds that you are mentally ill or mentally disordered as defined under the *Mental Health Act 2007* (NSW), they can take you to a psychiatric hospital or unit.

The ambulance officer(s) can ask the police for help to do this. They are only likely to do this if you resist when they try to get you to hospital.

4B.6: Involuntary admission to hospital by order of the Local Court

If you have to go to the Local Court because you have been charged with a criminal offence and the magistrate believes that you could be a mentally ill person as defined under the *Mental Health Act 2007* (NSW), the magistrate can order the police to take you to hospital for assessment.

4B.7: Involuntary admission to hospital on a magistrate's order

A magistrate who has had a request from your family or friends may order a medical practitioner and any other person (including police) to come and visit you if the magistrate considers that you are a person with a mental illness who needs to go to hospital, and it has been difficult for a doctor to come and see you.

The police can, in these circumstances, enter your home without a warrant.

4B.8: Involuntary admission to hospital while you are a voluntary patient

At any time while you are a voluntary patient in any hospital, a medical practitioner can decide that you should be made an involuntary patient under the *Mental Health Act 2007* (NSW).

[The same process](#) is used to assess and admit you as an involuntary patient in this situation as is used after you are taken to hospital by the police, ambulance, etc. For more about this process, click [here](#).

Your behaviour as a voluntary patient and your willingness to accept the hospital's suggested treatment can be used by the medical practitioners when considering whether or not to make you an involuntary patient. The hospital's account of your conduct as a voluntary patient can be questioned and challenged by you or your legal representative if your status is considered in a mental health inquiry by [a single-member Mental Health Review Tribunal](#).

4B.9: Notification of involuntary admission

If you are admitted as an involuntary patient or your admission is changed from voluntary to involuntary, your Primary Carer must be notified.

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Part 4 Section C: Admission to hospital under the *Mental Health Act 2007* (NSW)

This section outlines the requirements for admission under the *Mental Health Act 2007* (NSW).

The following questions are answered:

- [What is the legal definition of mental illness?](#)
- [What is the legal definition of mental disorder?](#)
- [What is not regarded as mental illness or mental disorder?](#)
- [What are the steps to being assessed as mentally ill or mentally disordered?](#)
- [What information must you be given on admission under the *Mental Health Act 2007* \(NSW\)?](#)

4C.1: What is the legal definition of mental illness?

The legal definition of mental illness under the *Mental Health Act 2007* (NSW) is quite different from a formal medical diagnosis of mental illness such as schizophrenia or bi-polar disorder, as described in the DSM (the *Diagnostic & Statistical Manual of Disorders*). A formal medical diagnosis is based on the symptoms of particular mental illness and is also called a 'clinical diagnosis'.

The legal definition exists mainly for the purpose of deciding whether you have a mental illness or disorder that will require you to be treated under the *Mental Health Act 2007* (NSW) without your consent. In deciding whether you are mentally ill, your 'continuing condition' will be taken into consideration, including any likely deterioration that may occur.

There are two parts to the legal definition. To be found mentally ill under the *Mental Health Act 2007* (NSW), you have to:

- [have a condition that seriously impairs, either temporarily or permanently, your mental function](#) ; and
- [be at risk of harming yourself or other people](#).

You can have a mental illness and not be considered by the law to be a mentally ill person. You might, for example, be receiving treatment for schizophrenia. As a result of the treatment, your symptoms may be reduced and are therefore no longer affecting your mental function or behaviour. In this case, you have a mental illness but would not be considered a mentally ill person under the *Mental Health Act 2007* (NSW).

4C.1.1: A condition that seriously impairs, either temporarily or permanently, your mental function

This is shown by you having:

- delusions (for example, false beliefs);
- hallucinations (for example, hearing voices, or seeing things that no-one else can see);
- serious disorder of thought form (for example, your thoughts are not coherent);
- severe disturbance of mood;
- sustained or repeated irrational behaviour, indicating the presence of delusions, hallucinations, serious disorder of thought or severe disturbance of mood.

This definition is based on the symptoms you are experiencing rather than the diagnosis you have been given.

4C.1.2: Risk of harming yourself or someone else

Such risk might be found to exist if you are hearing voices (which is a symptom of your mental illness) and these voices are telling you to do things that you would not normally do and that could be dangerous to you or others.

Such risk might also be found to exist if you are experiencing a period of mania that might cause you, for example, to spend money excessively and/or inappropriately, or to behave in a way that puts your reputation at risk.

4C.2: What is the legal definition of mental disorder?

You would be considered to be a mentally disordered person under the *Mental Health Act 2007* (NSW) if you did not have a mental illness but behaved in such an irrational way that treatment and control is necessary to protect you or another person/s from serious physical harm. For example, if a major crisis in your life has made you feel suicidal, then you may be considered a mentally disordered person. In this situation, even if you didn't have a mental illness, you may be mentally disordered.

As a mentally disordered person, you can only be kept in hospital for up to three working days, and a doctor must reassess you every 24 hours.

You cannot be admitted to hospital as a mentally disordered person more than three times each month.

4C.3: What is *not* regarded as a mental illness or mental disorder?

Having any one of the following does not mean you are a mentally ill person or a mentally disordered person. They are not enough, on their own, to be the basis of you being admitted to hospital against your will:

- having strong political beliefs or engaging in political activity;
- holding particular religious opinions or beliefs;
- having a developmental disability;
- having a particular economic status;
- having a particular cultural or racial background.

Doing any one of the following does not mean you are a mentally ill person or a mentally disordered person. They are not enough, on their own, to be the basis of you being admitted to hospital against your will:

- engaging in different sexual practices or sexual promiscuity;
- engaging in immoral behaviour;
- engaging in illegal behaviour;
- taking drugs;
- engaging in anti-social behaviour.

4C.4: What are the steps to being assessed as mentally ill or mentally disordered?

There are several steps that need to be taken before you can be made an involuntary patient on the basis that you are mentally ill or mentally disordered under the *Mental Health Act 2007* (NSW).

The process to make someone an involuntary patient is often called 'scheduling' or 'putting someone on a schedule'. This refers to the forms the doctors have to fill out as part of the three steps under the *Mental Health Act 2007* (NSW). These forms are found in Schedule 1 of the Act.

4C.4.1: Step 1: examination by an 'authorised medical officer'

Up to 12 hours after you are brought to hospital or after being detained if you were already a voluntary patient, but 'as soon as practicable', you will be examined by a doctor who is an 'authorised medical officer'.

If the authorised medical officer forms the view that you are a mentally ill or mentally disordered person, then you will be detained for the second step, which is a second assessment.

If the authorised medical officer does not think you are either mentally ill or mentally disordered, you have to be allowed to leave. In this situation you could agree to stay in hospital as a voluntary patient if the hospital thinks this appropriate.

If you are allowed to leave, there is no legal obligation for the police, ambulance or the hospital to take you home. However, the hospital does owe you a general duty of care to not put you in a situation of dangerousness and NSW does have a policy not to discharge people from hospital into homelessness.

4C.4.2: Step 2: second assessment

As soon as practicable after you see the first authorised medical officer and are found by that officer to be mentally ill or mentally disordered, you will see a second doctor who is also an 'authorised medical officer'. If the first 'authorised medical officer' is not a psychiatrist, then this doctor must be one.

If both doctors find that you are mentally ill or mentally disordered, this is enough to force you to stay in hospital at least until the next mental health inquiry held by a single-member Mental Health Review Tribunal.

If the second doctor does not find that you are mentally ill or mentally disordered, you are likely to be kept in hospital to be assessed by a third doctor (this is the third step).

4C.4.3: Step 3: third assessment

If a third assessment is needed, the third doctor who does the assessment must be a psychiatrist. If that third doctor does not think you are mentally ill or mentally disordered, then you must be allowed to leave.

If the third doctor forms the view that you are mentally ill or mentally disordered and therefore disagrees with the second doctor, then you will be kept in hospital until a mental health inquiry is held by a single-member Mental Health Review Tribunal.

4C.5: The information you must be given on admission under the *Mental Health Act 2007* (NSW)

Once you have been detained in hospital under the *Mental Health Act 2007* (NSW), you must be given a statement of your rights. The Statement of Rights says:

Your rights

You should read the questions and answers below to find out your rights and what may happen to you after you are brought to a mental health facility.

What happens after I arrive at a mental health facility?

You must be seen by a facility doctor not later than 12 hours after you arrive at the mental health facility.

If you are a person who is already in a mental health facility as a voluntary patient, and you have been told you are now to be kept in the facility against your will, you must be seen by a facility doctor not later than 12 hours after it is decided to keep you in the facility.

When can I be kept in a mental health facility against my will?

You can be kept in a mental health facility against your will if you are certified by the facility doctor as a mentally ill person or a mentally disordered person. The doctor will decide whether or not you are a mentally ill person or a mentally disordered person.

A mentally ill person is someone who has a mental illness and who needs to be kept in a mental health facility for his or her own protection or to protect other people. A mentally disordered person is someone whose behaviour shows that he or she needs to be kept in a mental health facility for a short time for his or her own protection or to protect other people.

The facility cannot continue to keep you against your will unless at least one other doctor also finds that you are a mentally ill person or a mentally disordered person. At least one of the doctors who sees you must be a psychiatrist.

How long can I be kept in a mental health facility against my will?

If you are found to be a mentally disordered person, you can only be kept in a mental health facility for up to 3 DAYS (weekends and public holidays

are not counted in this time). During this time you must be seen by a doctor at least once every 24 hours. You cannot be detained as a mentally disordered person more than 3 times in any month.

If you are found to be a mentally ill person, you will be kept in the mental health facility until you see the Mental Health Review Tribunal who will hold a mental health inquiry to decide what will happen to you.

How can I get out of a mental health facility?

You, or a friend or relative, may at any time ask the medical superintendent or another authorised medical officer to let you out. You must be let out if you are not a mentally ill person or a mentally disordered person or if the medical superintendent or another authorised medical officer thinks that there is other appropriate care reasonably available to you.

Can I be treated against my will?

The facility staff may give you appropriate medical treatment, even if you do not want it, for your mental condition or in an emergency to save your life or prevent serious damage to your health. The facility staff must tell you what your medical treatment is if you ask. You must not be given excessive or inappropriate medication.

Can I be given electro convulsive therapy (ECT) against my will?

Yes, but only if the Mental Health Review Tribunal determines at a hearing that it is necessary or desirable for your safety or welfare. You have a right to attend that hearing.

More information:

You should read the questions and answers below to find out about mental health inquiries and when you may be kept in a mental health facility against your will after an inquiry.

When is a mental health inquiry held?

A mental health inquiry must be held as soon as is practicable after it is decided to keep you in a mental health facility against your will because you are a mentally ill person. This may take up to four weeks. You should be advised by the mental health facility that you can request an appeal (see **What are my rights of appeal if I have been made an involuntary patient?** below).

What happens at a mental health inquiry?

The Mental Health Review Tribunal will decide whether or not you are a mentally ill person.

If the Mental Health Review Tribunal decides that you are not a mentally ill person, you must be let out of the mental health facility.

If the Mental Health Review Tribunal decides that you are a mentally ill person, the Mental Health Review Tribunal will then decide what will happen to you. Consideration must be given to the least restrictive environment in which care and treatment can be effectively given. The Mental Health Review Tribunal may order that you be kept in a mental health facility as an involuntary patient for a set time (not more than 3 months) or the member may order that you be let out of the mental health facility. If you are let out, the Mental Health Review Tribunal may make a community treatment order requiring you to have certain treatment after you are let out.

The Mental Health Review Tribunal may adjourn the inquiry for up to 14 days where he or she considers that it is in your best interests. If the Mental Health Review Tribunal makes an order that you are to remain in a mental health facility as an involuntary patient, the Mental Health Review Tribunal must also consider whether you are capable of managing your financial affairs. If the Mental Health Review Tribunal is not satisfied that you are capable, an order must be made for the management of your affairs under the *NSW Trustee and Guardian Act 2009*.

What rights do I have at a mental health inquiry?

You can tell the Mental Health Review Tribunal what you want or have your lawyer tell the Mental Health Review Tribunal what you want. You can wear street clothes, be helped by an interpreter and have your primary carer, relatives and friends told about the inquiry. You can apply to see your medical records.

What are my rights of appeal if I have been made an involuntary patient?

You (or a carer or friend or relative) may at any time ask the medical superintendent or another authorised medical officer to discharge you. If the medical superintendent or authorised medical officer refuses or does not respond to your request within 3 working days you (or a carer or friend or relative) may lodge an appeal with the Mental Health Review Tribunal.

You will be given a notice setting out your appeal rights.

What happens when the time set by an order making me an involuntary patient has nearly ended?

The facility medical staff will review your condition before the end of the order and the mental health facility may either discharge you or apply to the Mental Health Review Tribunal for a further order.

The Tribunal must let you out of the mental health facility if it decides that you are not a mentally ill person or if it feels that other care is more appropriate and reasonably available.

Who can I ask for help?

You may ask any facility staff member, social worker, doctor, official visitor, chaplain, your own lawyer or the Mental Health Advocacy Service for help. The Mental Health Advocacy Service telephone number is: (02) 9745 4277

Can I ask a friend or relative to act for me?

You may nominate a person to be your primary carer while you are in a mental health facility. Your primary carer may ask for information on your behalf and will be informed if you are kept in a mental health facility, subject to a mental health inquiry, transferred or discharged and of proposed special mental health treatments or surgical operations. You and your primary carer also have the right to be given information about follow-up care if you are discharged.

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Part 4 Section D: Compulsory treatment in hospital under the *Mental Health Act 2007* (NSW)

This section outlines what treatment you can be given without your consent under the *Mental Health Act 2007* (NSW). It provides information on:

- [Medication](#)
- [Use of seclusion, sedation and restraint](#)
- [Electro-convulsive therapy \(ECT\)](#)
- [Treatments that are prohibited under the *Mental Health Act 2007* \(NSW\)](#)

4D.1: Medication

If you are an involuntary patient, the hospital treating team decides what medication, including the level of dosage, you will be given in hospital.

In giving you medication as an involuntary patient, the hospital can:

- give you medication intravenously (by way of injection);
- give you different medication from what has been prescribed for you in the community.

However, the hospital cannot:

- give you medication in excessive doses or that are inappropriate for your condition or diagnosis;
- give you medication that is a 'prohibited treatment' under the [Mental Health Act 2007 \(NSW\)](#).

There is nothing in the *Mental Health Act 2007* (NSW) that allows the use of force to make you take your medication.

4D.2: Use of seclusion, sedation and restraint

The *Mental Health Act 2007* (NSW) says that:

... any restriction on the liberty of patients and other people with a mental illness or mental disorder and any interference with their rights, dignity and self-respect is to be kept to the minimum necessary in the circumstances.

NSW Health has a policy on the use of both seclusion and restraint in psychiatric hospitals. [Click here to view the policy](#). If you think these policies have been breached, then you can [complain through the complaints and advocacy services available to involuntary patients](#).

There is nothing in the *Mental Health Act 2007* (NSW) that gives a hospital or any health care professional special permission to restrain or sedate involuntary patients or put them in seclusion.

In cases alleging assault through the use of force to sedate or restrain patients, courts have from time to time allowed health care professionals to rely on a common law defence of necessity in life-saving emergencies only.

The following sections have more information about the use of:

- [Seclusion](#)
- [Sedation](#)
- [Restraint](#)

4D.2.1: Seclusion

NSW Health has a policy, '[Seclusion Practices in Psychiatric Facilities](#)', that says that seclusion is to be used as a last resort. It can be used when clinicians have reason to believe that a patient is likely, in the short term, to harm himself, herself or others, and that seclusion is the most reasonable option available to keep people safe. The policy also states that:

- The period of seclusion must be limited to the minimum time required to remove the risk of harm.
- Seclusion must be terminated once indications for risk of harm have ceased to be present.

The policy says that seclusion should not be used:

- if the patient is suicidal or actively self-harming;
- as a punishment or threat;
- as a management strategy to compensate for a shortage of staff;
- where there are clinical or medical conditions requiring physical proximity/monitoring by staff; or
- where the patient has lost consciousness.

4D.2.2: Sedation

Giving sedative medication to a patient is the same legally as giving any other medication, if force is used. There is nothing in the *Mental Health Act 2007*

(NSW) that requires or permits the use of force to administer medication.

NSW Health has policies that allow for limited use restraint of patients in particular circumstances.

For example, the policy for emergency departments contains the following statement:

'Involuntary sedation of an acutely behaviourally disturbed patient can be given in an emergency situation to save the person's life or prevent serious danger to the health of others under the common law principle of 'Duty of Care'. This includes children and those with alternative consent providers. Consent for emergency sedation should be sought from children and adolescents (even though it is unlikely to be given) and their parents whenever possible. The age of consent in New South Wales is 14 years. Below this age, parents are able to give consent for medical management.'

[For the full policy \(Mental Health for Emergency Departments: Reference Guide 2009\), click here.](#)

The NSW Health policy, '[Seclusion Practices in Psychiatric Facilities](#)', says that sedation by injection should be used to 'prevent harm to the patient', 'or others' or to 'relieve distress'. The policy states that:

'Sedation by injection should only be used in a psychiatric emergency when a patient's behaviour is so dangerously disturbed as to be a serious risk to him/herself or others and is not amenable to more conservative measures such as counselling or oral medication.'

4D.2.3: Restraint

Restraint is defined as any restriction on a person's freedom of movement.

The policies for emergency departments contains the following statement about physical restraint:

'The decision to use restraint is a clinical decision that must **only** be made **where a patient's disturbed behaviour simultaneously satisfies four pre-conditions**:

1. The person has a medical or psychiatric condition requiring care, **and**
2. The person is at the time incapable of responding to reasonable requests from health staff to co-operate, and measures promoting self-control are impractical or have failed, **and**
3. The person's behaviour is putting themselves or others at serious risk, **and**
4. Less restrictive alternatives are not appropriate (**emphasis added**).'

[For the full policy \(Mental Health for Emergency Departments: Reference Guide 2009\), click here.](#)

Being an involuntary patient means that the doors of your living environment in hospital can be locked and your freedom to move outside the hospital can be limited. This does not mean that involuntary patients can be restrained in ways that are not lawful.

Within a hospital, the NSW Health policy, '[Seclusion Practices in Psychiatric Facilities](#)', allows the use of restraint with devices in certain limited circumstances.

The policy authorises physical restraint in similar circumstances as described above for emergency departments. Although the policy refers to 'routine restraint', there is nothing in the *Mental Health Act 2007* (NSW) that authorises the use of force or restraint in any particular circumstances, let alone in a routine way.

The policy says restraint can only be used in what is described as a 'psychiatric emergency', which is defined as a situation where a patient's behaviour poses a serious risk of either physical injury, damage or extreme distress to either him or herself or to others, **and** immediate action is need to stop injury, damage or stress.

4D.3: Electro-convulsive therapy (ECT)

Electro-convulsive therapy (ECT) is a series of treatments involving a small electric current being passed through one or both sides of the brain. The treatment is known to be effective in some cases of serious depression. It is particularly used for people who cannot take antidepressant medication because of side effects.

There are different requirements to be satisfied before ECT can be given to [voluntary patients](#) and [involuntary patients](#).

4D.3.1: Voluntary patients and electro-convulsive therapy

If you are a voluntary patient you cannot be given ECT if you don't want it. As a voluntary patient, your doctor must carefully explain the following things to you before you agree or refuse to have ECT:

- what the treatment is and how it will be given;
- how many treatments are proposed;
- the possible good and bad side effects of the treatment;
- what other types of treatment are available;
- whether the doctor has any financial relationship with the hospital where treatment is to be given;
- that you can get advice from another doctor and a lawyer; and
- that you can choose to stop the course of treatment at any time.

You must also be given a chance to ask questions about the treatment and you must be given answers that you understand. If you agree to have ECT, your agreement must be in writing. If you do not agree to have ECT, then it cannot be given to you as a voluntary patient.

[If you have given consent but the medical superintendent is not sure that you are able to give informed consent](#) , they may ask the [Mental Health Review Tribunal to decide whether your consent is valid](#).

4D.3.2: Involuntary patients and electro-convulsive therapy

If you are an involuntary patient you can be given ECT even if you don't want it, but two doctors must state in writing that the treatment is both reasonable and necessary and the Mental Health Review Tribunal must approve the treatment. The Mental Health Review Tribunal will decide:

- whether ECT should be given to you if you can't give informed consent;
- whether ECT should be given to you if you can consent, but choose not to;
- whether your consent is valid in the situation where you have given consent (therefore, making sure that your decision is based on your understanding of all the facts); and
- how many treatments of ECT you can be given.

The Tribunal can make an order for you to have ECT for up to six months, but generally only authorise up to 12 treatments of ECT unless there are special circumstances.

Apart from the Tribunal, no-one, not even your relatives, can consent to ECT on your behalf.

You are entitled to legal representation at the Tribunal, however the Mental Health Advocacy Service does not usually represent patients at these hearings.

Like all Mental Health Review Tribunal hearings, you can have other people such as a guardian, relatives, friends or lay advocates at the hearing. The Tribunal listens to you or your lawyer about your views about ECT and the views of the other participants, including the hospital, before making a decision.

The Tribunal hearings about ECT are often called at short notice. The hearings are usually done by video conference.

4D.4: Prohibited treatments under the *Mental Health Act 2007* (NSW)

Under the *Mental Health Act 2007* (NSW) certain treatments are **not allowed** to be given to any patient in NSW.

Unlike other sections of the Act that regulate treatment, breach of the section prohibiting certain treatments can lead to a criminal prosecution. The following procedures are prohibited under the *Mental Health Act 2007* (NSW):

- deep sleep therapy;
- insulin coma therapy;
- psychosurgery.

Psychosurgery is defined as:

- (a) the creation of 1 or more lesions, whether made on the same or separate occasions, in the brain of a person by any surgical technique or procedure, when it is done primarily for the purpose of altering the thoughts, emotions or behaviour of the person, or
- (b) the use for such a purpose of intracerebral electrodes to produce such a lesion or lesions, whether on the same or separate occasions, or
- (c) the use on 1 or more occasions of intracerebral electrodes primarily for the purpose of influencing or altering the thoughts, emotions or behaviour of a person by stimulation through the electrodes without the production of a lesion in the brain of the person, but does not include a technique or procedure carried out for the treatment of a condition or an illness prescribed by the regulations for the purposes of this definition.

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Part 4 Section E: Right to maintain physical health when an involuntary patient

Issues often arise when an involuntary patient seeks treatment for physical illnesses or conditions, when they are under the 'care treatment and control' of a psychiatric hospital or unit.

Care in such units tends to focus on treatment, usually with medicines, for mental illness. There is sometimes concern that patients' other medical conditions don't get proper attention in these circumstances.

If you think you need to see a doctor or another health care professional, such as a dentist, you should tell the staff. If you are allowed leave, you can ask for urgent leave to see your regular doctor, dentist, etc.

If you think you are not getting proper treatment or care for a medical condition, or that the treatment for your mental illness is affecting your medical condition and you want the treatment checked, you should ask to speak to the [Medical Superintendent](#) of the hospital and/or ask to urgently speak to the [Official Visitor](#).

You could also call the [Health Care Complaints Commission \(HCCC\)](#), but because complaints to the HCCC must be in writing, urgent problems are not quickly resolved, including concerns or complaints about failure to provide other medical treatment or care. After you are discharged from hospital you may wish to write to the HCCC to put your concerns about your care on the record.

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Part 4 Section F: Compulsory treatment in the community under the *Mental Health Act 2007*

4F.1: Community Treatment Orders (CTO)

A Community Treatment Order (CTO) is a legal order made by the Mental Health Review Tribunal (MHRT). This section outlines:

- [When a CTO can be made](#)
- [How the treatment plan is developed](#)
- [How the CTO is made and for how long](#)
- [What the effect of a CTO is and what happens if you don't comply with it](#)
- [How you can get the CTO changed or cancelled](#)
- [Recognition of CTO made in other states or territories](#)

When dealing with some criminal matters a CTO can be made by a Magistrate.

4F.1.1: When can a Community Treatment Order be made?

The Mental Health Review Tribunal make a CTO if:

- they find you to be a 'mentally ill person' at the mental health inquiry that takes place 'as soon as is practicable' after you are detained as an 'assessable person'; or
- you have been an involuntary patient in hospital and the hospital applies for you to be discharged on a CTO; or
- you are already on a CTO that is about to end and your treating team applies for another order to be made; or
- you are not under any current order and an application is made for a new community treatment order for you while you are in the community.

If you are not currently a patient in a mental health facility and application for a CTO could be made about you by an authorised person who may be a medical practitioner who is familiar with your medical history. A family member, carer or friend who is familiar with your medical history can also apply to a medical practitioner for a CTO to be made.

There are certain requirements about the notice provisions for a CTO:

- You must be told in advance when the hearing will be held in writing by the person applying for the CTO
- The notice must include a copy of your treatment plan
- If you are not in a mental health facility, the application must be heard no earlier than 14 days after the notice has been given to you (which does not apply if you have a current CTO in place)

4F.1.2: How is the treatment plan developed?

The treatment plan in the CTO is usually prepared by the psychiatric case manager and must be presented to the Mental Health Review Tribunal for approval. If it is proposed that you be put on a CTO, wherever possible you should be involved in the development of your treatment plan.

After discussing the treatment plan with you, the case manager or a staff member from the health care provider, along with the doctor and/or social worker in hospital, will finalise the treatment plan.

The treatment plan usually involves a community mental health worker visiting you at your home to give you medication, or you may go to the health service to get treatment. The Tribunal can order that you receive treatment at a mental health service. You can ask to receive treatment in your home. However, treatment can't be given to you in your home unless you agree to it.

4F.1.3: How is the Community Treatment Order made and for how long?

If it is proposed that you be put on a CTO, you must be told in advance when the hearing will be held and be given a copy of the proposed Treatment Plan. You may go to the hearing with relatives and/or friends and/or a legal representative. Your treating doctor, and another mental health care professional from the health care provider will usually also be at the hearing. It is very important that you go to the hearing so you have a chance to tell the Mental Health Review Tribunal what you think about being on a CTO. If you can't or don't want to attend you may be able to be involved in the hearing by telephone. You should discuss this with your case manager or staff at the Tribunal.

If you do not go to the hearing then the hearing may still happen without you and a CTO made in your absence.

The maximum length of a CTO is 12 months, however most CTOs are made only for 6 months. Before the end of the order the health care service can ask the Mental Health Review Tribunal to make another order. There must be a hearing before another order can be made.

It is possible for a person to have two or more CTO without a break in between.

4F.1.4: What is the effect of a Community Treatment Order and what happens if you don't comply with it?

A CTO authorises compulsory care for a person living in the community. Force cannot be used to give medication to the person on the CTO in the

community. However, if taking medication is a condition of your CTO and you don't take the medication, this would be a breach of the CTO.

If you are put on a CTO you are required by law to do what the order says. If you don't comply, you could be in breach of the order and the following steps may be taken:

- Firstly, the case manager may verbally tell you that you have breached the Order and encourage you to comply with it.
- If you still do not comply, the case manager may send you a letter stating you have breached the order, warning that if you continue to breach the order, the police may be called.
- If you still do not comply, the case manager may ask the police to help to take you to a psychiatric hospital or a health care service.
- At the health care service, you will be encouraged to accept treatment. If you still refuse, a doctor will examine you with a view to admitting you to hospital.
- If you are taken to hospital, medication may be given to you without your consent, if this is considered appropriate as a result of the medical examination.

You cannot be forcibly made to take medication if you are on a CTO but if you refuse medication and taking medication is part of the CTO (it usually is), and your condition is likely to get worse without medication, then some or all of the steps set out above are likely to be taken because you have breached the Order.

If you have a history of using drugs or alcohol and this affects your mental illness, you may have to have random urine tests as part of your treatment plan forming part of your CTO. Your treating team should discuss with you if they intend to include this in the treatment plan. If so, it must be specified in words that make clear that you must supply random urine tests, and that the number should be no more than a set number in any one month.

4F.1.5: Can you have a Community Treatment Order changed or cancelled?

You or your case manager can apply to the Mental Health Review Tribunal (MHRT) to have a CTO changed ('varied') or cancelled ('revoked'). The MHRT is unlikely to change or cancel an order unless circumstances have changed significantly since the order was made or there is new information available that wasn't available when the order was originally made.

Your doctor at the health care service can change the medication that is prescribed to you under a CTO at any time without needing to come back to the Tribunal. If you have concerns about your medication or don't want to be on a CTO anymore you may wish to discuss this with your case manager first. A director of a health care service can cancel a CTO at any time if they think you no longer benefit from the order.

Unless you are able to get a different assessment from a psychiatrist (preferably) or another health care professional the MHRT will rely on your treating doctors from the community mental health team for the assessment about whether you should remain on a CTO.

If you do get a report from another psychiatrist, that psychiatrist should state his or her opinion on:

- the likely outcome of you continuing without a CTO (giving the details of any alternative treatment plans, if this is suggested);
- whether you still have a mental illness (either under the *Mental Health Act 2007* definition or whether you have any other mental illness or disorder) and whether you need ongoing treatment (either as set out in the plan or in any other alternative treatment plan);
- whether there are side effects or reactions to the medication set out in the Treatment Plan and whether the medication remains appropriate for you given your current circumstances and the nature of the side effects.

4F.1.6: Recognition of Community Treatment Orders made in other states or territories

CTOs can be made for people from another state or territory if they are to be put into effect by a NSW health care facility.

CTOs made in NSW can be put into effect in another state or territory, depending on the laws of that state or territory. If you breach a CTO in this situation, then the breach will be dealt with according to that state or territory's law.

CTOs from Victoria, Queensland and the ACT are recognised in NSW and if you are on a CTO from one of these states and territories, your CTO can continue in NSW, with you being treated by Community Mental Health in NSW.

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Part 4 Section G: Rights and discharge under the *Mental Health Act 2007* (NSW)

If you are an involuntary patient, you cannot leave a psychiatric hospital or unit without permission ('being granted leave') or being discharged.

You can, however, be discharged and allowed to leave a hospital in several ways.

This section briefly outlines:

- [the various ways you can be legally discharged](#), with links to other parts of the Manual; and
- [how you can get temporary leave as an involuntary patient](#).

4G.1: Discharge

Unlike voluntary patients and all patients in general hospitals, as an involuntary patient, you cannot discharge yourself from hospital.

Involuntary patients can be discharged in several ways:

- The treating team in hospital can discharge an involuntary patient when they assess that an involuntary patient is no longer a mentally ill person or no longer needs care and treatment under the *Mental Health Act 2007* (NSW).
- An authorised medical officer or the medical superintendent of a mental health facility may discharge an involuntary patient under the *Mental Health Act 2007* (NSW) [after considering a request from the patient](#).
- [A single-member Mental Health Review Tribunal can discharge an involuntary patient either with conditions attached to the discharge or unconditionally](#). This can happen after a [mental health inquiry](#) under the *Mental Health Act 2007* (NSW).
- The full Mental Health Review Tribunal can discharge an involuntary patient [when reviewing the patient or considering an appeal against refusal to discharge](#). The Tribunal can discharge a patient without any conditions or discharge the patient onto a Community Treatment Order. The Tribunal can also discharge the patient into the care of the patient's primary carer.
- A patient or primary carer can request to be discharged by an authorised medical officer or the medical superintendent of a mental health facility. If this request is refused or failure to decide the application for discharge has not occurred within three working days, [the patient or primary carer may appeal to the Mental Health Review Tribunal](#). This appeal may be made either orally or in writing to the Tribunal, however patients and primary carers are encouraged to complete an appeal form which can then be served on the medical superintendent or faxed to the Tribunal on: (02) 9817 4543.

Appeals Forms are available at: [Click here \(see Attachments 1 & 2\)](#)

If the patient or primary carer does appeal to the Tribunal, the Authorised Medical Officer must provide a report to the Tribunal explaining the reasons for the refusal to discharge, or the failure to decide the request for discharge.

4G.2: Leave

Even if you are an involuntary patient, you still can be given leave to go outside the hospital or unit. If you need leave for a particular reason, for example, to attend a funeral, you should make a formal request for this sort of leave, explaining the reason. It is best to do this as early as possible once you know you need to have leave.

The conditions of which you are granted leave can be decided by your treating doctor or negotiated by you with hospital staff.

However, if you don't go back to the hospital after your leave, the hospital may contact the police who can, using force if necessary, return you to the hospital.

As an involuntary patient, you don't have a right to have leave, regardless of how long you have been a patient in the hospital.

If you have to go to court on a criminal charge, the hospital will usually arrange escorted transport. The hospital may also insist on escorted leave in other situations, for example, so that you can attend to important personal events such as the funeral of a close friend, relative or spouse.

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Part 4 Section H: Legal proceeding under the *Mental Health Act 2007* (NSW)

There are two main types of legal proceedings under the *Mental Health Act 2007* (NSW). This section provides information on:

- [The mental health inquiry](#)
- [Full Mental Health Review Tribunal hearings](#), including the [functions and orders](#) of the Mental Health Review Tribunal
- [Appeals against a decision](#) of the Mental Health Review Tribunal

4H.1: The mental health inquiry

The *Mental Health Act 2007* (NSW) says that if a person who is mentally ill person is to be kept in hospital against their will as an involuntary patient, their situation must be reviewed by the Mental Health Review Tribunal 'as soon as is practicable after admission'. The Mental Health Review Tribunal holds relatively informal inquiries, usually by audio-visual link, at each hospital every two weeks. This hearing is called a 'mental health inquiry'.

If you are admitted as an involuntary patient, soon after you have been admitted you should be given notice of the date of the mental health inquiry. For more about the notice you should get, click [here](#).

At the hearing, the Mental Health Review Tribunal will have [access to your file](#) and you can be [legally represented](#). [You can also have an interpreter if you need one to understand what is happening at the hearing](#).

To find out more about what happens at the hearing, click [here](#).

[There is a limit on how long the Mental Health Review Tribunal can order you to stay in hospital .](#)

A person who is 'mentally disordered' is not taken to see the Mental Health Review Tribunal for an initial inquiry because they must be discharged automatically after three working days.

4H.1.1: How long can I be kept in hospital?

[If the hospital wants an order to hold you as an involuntary patient](#) the Mental Health Review Tribunal will hold a hearing about your case (this is referred to as the mental health inquiry) and decide whether or not to make you an involuntary patient.

The Mental Health Review Tribunal can decide that you will be kept in hospital as an involuntary patient for up to three months, or order that the hospital discharge you. The Mental Health Review Tribunal can also put you on a Community Treatment Order or discharge you into the care of your Primary Carer.

For more about what the Mental Health Review Tribunal can and can't do, click [here](#).

There are generally mental health inquiries by the Mental Health Review Tribunal at each psychiatric hospital or psychiatric unit in a public hospital every two weeks. The inquiry is held in a room at the hospital and the hearing is often conducted by video link by a single member of the Mental Health Review Tribunal.

4H.1.2: Notice of hearing

Soon after you have been admitted, you should be given notice of the date of the mental health inquiry. Notice of the inquiry will also be given to your Primary Carer. Other relatives or friends may be allowed to be at the inquiry.

If you decide you don't want your relatives or friends to come to the inquiry, just tell the social worker or the nurse-in-charge. It is up to the Mental Health Review Tribunal to decide who will be allowed to give their views at the inquiry.

4H.1.3: Interpreters

If English is not your first language and you want to have an interpreter at the mental health inquiry, you should be given an interpreter at no cost to you. If you need an interpreter, you should ask for a qualified interpreter as soon as possible after you are formally told about the mental health inquiry.

4H.1.4: Information on file

At the mental health inquiry, the Mental Health Review Tribunal will have access to your file and to any reports specially prepared for the hearing. This may include a doctor's report and a report from a social worker listing the options for the least restrictive form of care.

Your file may contain any or all of the following:

- any forms or certificates that led to your admission (for example, a schedule from a doctor);
- one or more forms that set out the hospital's reasons for recommending your detention as an involuntary patient;
- a record of all previous medical notes that the hospital has (for example, discharge summaries from that or other hospitals);
- notes on any interviews by doctors, social workers, occupational therapists, as well as daily notes from nurses;
- a medication chart showing what treatments have been prescribed and given to you;
- records of any tests (psychological, bio-medical, X-rays, CAT scans, etc).

Normally you or your lawyer also gets to see or be given a copy of the information about you that is given to the Mental Health Review Tribunal by the hospital. You or your legal representative can ask to see and be given copies of other parts of your file.

[You have a right to access this information](#) but you may find that it takes a long time to get access to all the information on file about you while you are still a patient. Without a lawyer or an advocate to negotiate on your behalf, you may be told that the only way to get to see or get a copy of your file is by using the *Government Information (Public Access) Act 2009 (NSW)* (GIPA) application, which used to be called 'freedom of information' (FOI). This is likely not to get you access in time for you to read before the mental health inquiry is held.

4H.1.5: Legal representation

The *Mental Health Act 2007* (NSW) says that you can have a lawyer represent you at the mental health inquiry. (You can, however, decide that you don't want anyone to represent you.) The right to have a lawyer represent you includes having the right to phone a lawyer if you wish. The lawyer is your advocate and will argue for what you want.

The [Mental Health Advocacy Service](#) provides free legal representation in mental health inquiries. Click here to read more about what the [Mental Health Advocacy Service](#) does . [Click here for their publication 'Have you been involuntarily admitted to hospital?'](#)

You can also choose to have your own private lawyer, for whom you would have to pay.

It is very important to tell your lawyer what you want said to the Mental Health Review Tribunal. If you want to be discharged from hospital you should tell your lawyer. You should explain any plans you have made for leaving hospital, such as:

- plans to get treatment from a community health centre or a private doctor;
- where you are going to live: if you don't have somewhere to live, then you could ask the social worker to help you find somewhere;
- who could look after you: you could find out from your social worker about services in your area such as drop-in-centres, living skills centres and community health centres, that may be able to help you when you leave hospital;
- what help you could get from family or friends or community services such as the [Personal Helpers and Mentors Service](#): they can come to the hearing and tell the magistrate how they can help you when you leave the hospital.

Well before the mental health inquiry, you or your lawyer should talk to the hospital staff to make sure that you are not being given so much medication that

you wouldn't be able to fully concentrate, follow what is happening and answer any questions at the inquiry.

4H.1.6: What happens at a mental health inquiry?

The *Mental Health Act 2007* (NSW) says that you are to be dressed in everyday clothes for the hearing, not pyjamas. You must only be given a minimal amount of medication so that you can take part in the mental health inquiry and understand what is going on. Male patients should be given shaving equipment before the inquiry. Female patients should have access to make-up.

Usually, the mental health inquiry goes for about half an hour. The following are likely to happen at the inquiry:

- You will be taken to the room where the Mental Health Review Tribunal is holding the inquiry. A nurse, a social worker and a doctor are also likely to be there.
- The Mental Health Review Tribunal member(s) may be actually in the room at the hospital or may be holding the inquiry using an audio-visual link. This means you will see them on a screen and be able to hear them. They will also be able to see and hear you.
- [The Mental Health Review Tribunal will have your hospital file.](#)
- Everybody will usually be called by their formal name, for example, Ms Smith, Dr Jones, Mr Lee.
- The doctor (and possible other hospital staff who are at the hearing) will tell the Mental Health Review Tribunal why they think you should stay in hospital as an involuntary patient.
- The Mental Health Review Tribunal member(s) will ask questions about what the doctors and others have said or about other things that the Tribunal member(s) think are important to making the best decision.
- The Mental Health Review Tribunal member(s) will ask you or your lawyer what you want. This is your chance to have a say about what is happening to you. (If you or your lawyer don't say anything, it is very likely the Tribunal will do what the doctor or hospital asks.)

At the end of the hearing the Mental Health Review Tribunal will make a decision about whether or not you are to stay in hospital as an involuntary patient, be discharged, or put on a Community Treatment Order.

For more about the decisions the Mental Health Review Tribunal can make, click [here](#).

4H.1.7: Powers of the Mental Health Review Tribunal in a mental health inquiry

If, at the end of the mental health inquiry, the Mental Health Review Tribunal decides that you should stay in hospital to get care and treatment, the Tribunal can order that you stay in hospital as an involuntary patient for up to three months. If the doctors or hospital believe that you need to stay in hospital beyond the end of the order, they can apply for a further order from the Mental Health Review Tribunal.

If the Mental Health Review Tribunal decides that you can be cared for and treated while living in the community, it can order that you be discharged from hospital and put you on a Community Treatment Order. [Community Treatment Orders can be made for up to 12 months, however most are made for 6 months only.](#)

Discharge: If the Mental Health Review Tribunal doesn't think that you are a mentally ill person under the definition in the *Mental Health Act 2007* (NSW), it can order that you be discharged or [released to the care of your primary carer](#). Your discharge can be put off for 14 days if the Tribunal thinks it is in your best interests.

Order to make you an Involuntary Patient: If the Mental Health Review Tribunal feels that you should stay in hospital to receive care, treatment and control because you are a mentally ill person as defined in the *Mental Health Act 2007* (NSW), you can be ordered to stay in hospital for up to three months. You can be discharged at any time during this period if the treating team decide you are no longer a mental ill person as defined under the *Mental Health Act 2007* (NSW).

Order that you be discharged into the care of your Primary Carer: Even if the Mental Health Review Tribunal thinks you are mentally ill under the definition in the *Mental Health Act 2007* (NSW), it can discharge you into the care of your Primary Carer. (The meaning of 'Primary Carer' is precisely defined under the [Mental Health Act 2007](#).)

Determine that you be placed on a Community Treatment Order (CTO): If the Mental Health Review Tribunal determines you are a mentally ill person under the definition in the *Mental Health Act 2007* (NSW), rather than order a stay in hospital, it can place you on a [Community Treatment Order](#).

If the Mental Health Review Tribunal is thinking about making a CTO and you have been on a CTO before, details of your compliance with the previous order or orders will usually be presented to the Tribunal at the mental health inquiry.

A Mental Health Review Tribunal can make a CTO even if you are not at the mental health inquiry, as long as you have been given appropriate notice of the inquiry. You should be given a copy of the proposed treatment plan prior to the mental health inquiry.

4H.2: Mental Health Review Tribunal

4H.2.1: What is the Mental Health Review Tribunal?

The Mental Health Review Tribunal plays an important role in the care and control of people with a mental illness in NSW. The Tribunal has wide powers under the *Mental Health Act 2007* (NSW) and is involved in making and reviewing orders about the treatment of people with a mental illness. It does this through holding hearings on a range of issues. There is more about the range of issues the Tribunal deals with below.

The Tribunal has a number of members, but when it holds hearings it is made up of either one person, who is a former judge or a lawyer; or three people: a lawyer, a psychiatrist and another person experienced in mental health. If you have to see the Tribunal more than once, there may be different members making up the Tribunal each time. The Tribunal holds hearings at Gladesville and also travels to hospitals and community health centres to hold hearings across NSW. Many hearings are now conducted by video-conference, however, you can ask for a face-to-face hearing if you would prefer this.

The following pages about the Mental Health Review Tribunal give information about:

- [What kinds of issues the Mental Health Review Tribunal deals with](#)
- [Hearings of the Mental Health Review Tribunal \(who organises them and what happens at a hearing\)](#)

- [Legal representation at Mental Health Review Tribunal Hearings](#)
- [The role of the Mental Health Review Tribunal and what orders it can make](#)

4H.2.2: What does the Mental Health Review Tribunal deal with?

The Mental Health Review Tribunal deals with:

- Mental health inquiries
- The extension of involuntary patient orders made at a mental health inquiry
- The extension of involuntary orders previously made by the Tribunal
- Appeals by a patient or their primary carer against refusal for discharge from hospital
- The making, changing and revoking (cancelling) of Community Treatment Orders
- Requests from hospitals for permission to give electro-convulsive therapy to involuntary patients
- Requests from the authorised medical officer of a hospital to determine whether or not a voluntary patient who is consenting to electro-convulsive therapy is able to give informed consent
- Requests from hospitals for permission for surgery (not psychosurgery) on involuntary patients who are not consenting to the surgery, or are unable to consent because they lack capacity
- [Requests from hospitals for permission to carry out 'special medical treatment'](#)
- Regular reviews of the case of forensic or correctional patients
- [Making and revoking \(cancelling\) of Financial Management Orders](#)

The Mental Health Review Tribunal has power to:

- [make involuntary detention orders](#)
- [extend involuntary detention orders](#)
- [end involuntary detention orders, including through appeals against orders](#)
- [review involuntary detention orders](#), [voluntary patients](#) and [forensic patients](#)
- make [Community Treatment Orders](#) and [Financial Management Orders](#)
- [make decisions about particular treatments such as electro-convulsive therapy](#)

4H.2.3: Mental Health Review Tribunal hearings

If the Mental Health Review Tribunal needs to [hold a hearing](#) about you, the hospital or community health centre will contact the Tribunal and organise the hearing. They will make sure you know when the hearing is being held.

Hearings, including mental health inquiries, are held in the hospital if you are an in-patient or at the local community health centre or some other convenient place if you are living in the community. The hearing may be done by video-conference, in person or in some circumstances by telephone.

You can also contact the Tribunal directly. For example, if you are living in the community and want to have a Financial Management Order cancelled or a Community Treatment Order changed or cancelled, you can contact the Tribunal directly or you ask your case manager to do this for you.

Hearings of the Mental Health Review Tribunal are open to the public but are sometimes held in locations that make public access very difficult. The hearing will be recorded by the Tribunal.

You have a right to have an interpreter and you can have friends and relatives with you. You are to be dressed in street clothes and you have the right to be given shaving equipment if you are a man or make-up if you are a woman.

At the hearing, the lawyer member of the Tribunal will lead the hearing (chair). They will start by introducing everyone in the room and explaining what the hearing is about.

Witnesses will include staff of the hospital and/or community health centre who have been involved with you. You and your lawyer and family members may also speak at the hearing.

If you find the hearing too stressful, you may ask the chairperson for a short break or for permission to leave.

The Tribunal will usually tell you its decision as soon as it is made and give you a document of that decision in writing.

The Tribunal can make an order even if you are not at the hearing, as long as you have been given appropriate notice of the hearing.

4H.2.4: Legal representation at Mental Health Review Tribunal hearings

You have a right to have a lawyer to represent you at a hearing of the Mental Health Review Tribunal.

The [Mental Health Advocacy Service](#) provides free legal representation on many of the matters that the Tribunal deals with, but not all. Click [here](#) to find out more.

You have a right to get your own lawyer to represent you at the Tribunal hearing, but this will usually mean that you have to pay legal fees. Ask your lawyer beforehand what fees will be charged.

4H.2.5: Adjournments, expiry dates and appeals

The Mental Health Review Tribunal has the power to adjourn (delay) mental health inquiries and other hearings, and may from time to time adjourn them to any times, dates and places and for any reasons as it thinks fit. The purpose of adjourning inquiries is to ensure they are properly conducted, and the Tribunal may delay it if it is necessary to arrange legal representation for you, or arrange for an interpreter to assist you or your carer or to allow time to gather any important evidence they feel they need to make a decision.

The Tribunal may adjourn a mental health inquiry for a period no longer than 14 days, if not satisfied that:

- the person concerned has not been informed of the authorised medical officer's duty in relation to the giving of notice; or
- notice has been given or that all reasonably practicable things have been done to give notice.

The decision to adjourn a mental health inquiry may only occur if:

- the Tribunal believes it is in the best interests of the subject person; and
- the Tribunal has considered the certificates given under the Act.

If the Tribunal adjourns a mental health inquiry or a review of an involuntary patient order, you continue to be detained in the mental health facility unless discharged or allowed to be absent on leave.

4H.3: Role of the Mental Health Review Tribunal and the decisions and orders it can make

This is in addition to: [Click here](#)

4H.3.1: Extending an order for involuntary detention

If an order to keep you in hospital is about to end, the hospital may want you to stay for longer. To do this, the hospital must make an application to the Mental Health Review Tribunal for a further involuntary patient order, similar to the original one made to the Tribunal at the mental health inquiry. The Tribunal will be given all the relevant evidence and decide whether the order should be extended or to discharge you.

If the Tribunal decides to make a further involuntary patient order it will set a time for when it will next review that order. Your treating doctor or hospital may discharge you at any time if the doctor thinks you are well, even if the Tribunal's order has not run out.

If the Tribunal has made you an involuntary patient and you are still mentally ill under the *Mental Health Act 2007* (NSW) at the end of the order, the hospital can make another application to the Tribunal for you to stay in hospital.

4H.3.2: Appeals against a refusal for discharge

If you are an involuntary patient, you may at any time ask the medical superintendent or authorised medical officer to discharge you. If this is refused, you may appeal to the Mental Health Review Tribunal against the refusal. The Tribunal will hold a hearing involving both the hospital and you (and/or your legal representative). The Tribunal will consider relevant information and make a decision either to discharge you or order that you stay in hospital.

4H.3.3: Process for request for discharge and appeals

You can apply to an authorised medical officer to be discharged either verbally or in writing. Your Primary Carer may also apply for you to be discharged.

You can appeal against the Authorised Medical Officer's decision if the Authorised Medical Officer refuses to discharge you, or fails to decide the application for discharge within three working days.

If the request is declined the authorised medical officer should explain the reason for doing so to the patient and record the decision in your file.

You or your primary carer can also appeal to the Mental Health Review Tribunal, which can be either verbally or in writing (Form 4 for the patient or Form 5 for the primary carer).

Remember, an appeal is not automatic. You must decide and indicate that you wish to make an appeal after hearing the authorised medical officer's decision or waiting the three working days if no decision is made.

The hospital staff should assist you (or your Primary Carer) by advising the Mental Health Review Tribunal of your oral request to appeal or by faxing the written request to the Tribunal (Form 4 or Form 5).

The Mental Health Review Tribunal will schedule a hearing for the appeal. This must be before a 3 member panel of the Tribunal. If an appeal is lodged before a mental health inquiry, the inquiry may be listed at the same time or immediately after the appeal. Notice of the inquiry must be given to you and your primary carer.

The authorised medical officer is required to provide a report explaining the reasons for refusing to discharge you or for failing to decide the application.

NOTE: A patient cannot decide to appeal until after the authorised medical officer has refused a request for discharge or failed to make a decision for 3 working days.

Further information is available in Section 3 of the Mental Health Review Tribunal's Civil Hearing Kit.

The Hearing Kit is available to download from the website [click here to download the Hearing Kit](#).

4H.3.4: Involuntary patient review

If you are an involuntary patient, the Mental Health Review Tribunal must see you and review aspects of your care and treatment at least every three months in the first year of your detention and thereafter every 6 months (or in some cases every 12 months). At this hearing, the Tribunal may discharge you if you are no longer a mentally ill person under the *Mental Health Act 2007* or place you on a Community Treatment Order or make you a voluntary patient.

4H.3.5: Voluntary patient review

If you are a voluntary patient and have been in hospital for more than 12 months, the Mental Health Review Tribunal will review your case and make sure that you are fully aware of all aspects of your care and treatment. Such a review is to take place once every 12 months.

4H.3.6: Forensic patient review

If you are a forensic patient, the Mental Health Review Tribunal has to regularly review your case. You have a right to get free legal help from the [Mental Health Advocacy Service](#) for these reviews. Click [here](#) to read about the Mental Health Advocacy Service.

You can also choose to have a private lawyer represent you instead, but you will have to pay for them yourself.

For more about forensic patient reviews, click [here](#).

4H.3.7: Community Treatment Orders

The Mental Health Review Tribunal can make an order for you to get mental health treatment in the community. The community health care centre that has the duty to carry out the treatment (known as a declared mental health facility) has to present the Tribunal with a treatment plan that outlines what help they think you need and what help they are prepared to give. You may discuss all aspects of the case and of the treatment plan with the staff at the mental health facility and with the Tribunal.

If an order is made and your circumstances change, you may ask the Tribunal to change or cancel the order.

4H.3.8: Electro-convulsive therapy and surgery

If you are an involuntary patient and the hospital thinks you need electro-convulsive therapy, the Mental Health Review Tribunal must decide whether or not you should have it.

If you are a voluntary patient and have consented to have electro-convulsive therapy, the authorised medical officer can ask the Mental Health Review Tribunal to hold an inquiry into whether or not you are able to give informed consent.

If the hospital thinks you need surgery but you object to it or are not able to make that decision, the Tribunal may decide about whether or not you should have the surgery.

4H.3.9: Financial Management Orders

The Mental Health Review Tribunal has the power to make a Financial Management Order while you are an in-patient in hospital. If a Financial Management Order is made, this means the NSW Trustee and Guardian will look after your finances.

The Tribunal can also revoke (cancel) Financial Management Orders. If you have such an order but think you are able to manage your own affairs, you should contact the NSW Trustee and Guardian and discuss it with them. The NSW Trustee and Guardian may give you control of your own financial and other matters. If the NSW Trustee and Guardian refuses to do so, you can contact the Mental Health Review Tribunal and ask them to consider your matter. You will need to provide information and reports from your doctor, case manager or other person involved in your care to show that you are now able to manage your own affairs.

4H.4: Appeals against a decision of the Tribunal

You may appeal against any decision of the Mental Health Review Tribunal to the NSW Supreme Court. Appeals against the making of a Financial Management Order can be made to the Administrative Decisions Tribunal or the Supreme Court. An appeal to the Supreme Court can be expensive and you will need legal representation. If you lose the appeal you may also be ordered to pay the legal costs of the other party. The Mental Health Advocacy Service cannot represent you at the Supreme Court unless you qualify for a grant of legal aid from Legal Aid NSW. [This involves a merit test for patients and a means and a merit test for people other than patients.](#)

For more about where to get legal help, click [here](#).

Disclaimer

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Part 4 Section I: Complaints and advocacy services for involuntary patients

This section outlines where you can go if you have any concerns about being an involuntary patient or the care and treatment you get as a voluntary patient.

If you are an involuntary patient and want to have your involuntary status reviewed, you should contact the authorised medical officer or the medical superintendent of the hospital where you are being treated. To find out more about this, click [here](#).

If you want legal advice about being an involuntary patient or want a lawyer to represent you at a mental health inquiry held by the Mental Health Tribunal or at another type of hearing of the full Mental Health Review Tribunal, you can contact the [Mental Health Advocacy Service](#).

If you have concerns about the quality of your care in hospital, you can contact the [Health Care Complaints Commission](#).

If you have concerns about any issue to do with your treatment and care (except legal issues about your voluntary status) you could contact a [Consumer](#)

[Advocate within the hospital](#).

If you have particular concerns about your care and treatment as an involuntary patient or the physical state of the hospital or unit where you are being treated, you can contact the [Official Visitor](#).

4I.1: The Authorised Medical Officer/Medical Superintendent

If you are an involuntary patient and want to be discharged, at any time you can ask the Medical Superintendent, or the person delegated by the Superintendent to be the 'Authorised Medical Officer', to discharge you.

You could either argue that you are no longer 'mentally ill' person under the definition in the [Mental Health Act 2007 \(NSW\)](#) or that you could be treated in a less restrictive setting, such as in a private hospital or while living and being cared for by family or friends, or through receiving community care and/or private medical or psychological treatment.

The Medical Superintendent or Authorised Medical Officer has the power, if they decide you are no longer 'mentally ill', to overturn a decision by a treating doctor to keep you in hospital. Despite an order made by the Mental Health Review Tribunal, an involuntary patient can be discharged at any time by hospital medical staff or be made a voluntary patient. The *Mental Health Act 2007 (NSW)* says that one of these things must happen if you no longer meet the definition of mentally ill or mentally disordered under the Act. Most people don't stay as involuntary patients for the full length of time set out in the order made by the Mental Health Review Tribunal at the mental health inquiry.

There is an application form to ask for a review of your involuntary status. You can ask any member of the hospital staff for the form. When you have completed the form, ask a staff member to give it to the Authorised Medical Officer. The form for this is called 'Application to medical superintendent for review of decision of authorised medical officer'. [Click here to download the form](#).

However, there is nothing in the *Mental Health Act 2007 (NSW)* or regulations that stops you from approaching the Authorised Medical Officer directly, and putting your case to him or her verbally. If you want to do this and find that you are not able or allowed to make contact, you could ask a member of your family or a friend to do so. Alternatively, you could approach a [legal service](#) or an [advocacy service](#) and tell them of your attempts to contact the Authorised Medical Officer.

If the Authorised Medical Officer rejects your application to be discharged, or does not respond to your request for discharge within three days, you can [appeal to the Mental Health Review Tribunal](#). [Legal Aid NSW](#) now provides free representation at hearings of these appeals before the Mental Health Review Tribunal.

The Medical Superintendent of a hospital can and should, like the administrator of any public health facility, receive and deal with complaints and concerns about the [general standard of care](#) you get in hospital. It is always best to, if possible, to put such complaints or concerns in writing and keep a copy.

4I.2: Consumer advocates at hospitals

Many hospitals have Patient Representatives or Consumer Advocates. Consumer Advocates are employed by the Area Health Services to provide support and advice to patients and their carers and relatives. Consumer Advocates may also be involved in advocacy in a particular hospital. Consumer Advocates are often well connected to local community services and are able to help patients, their carers and relatives with information on where to get particular types of help and support.

In psychiatric units and hospitals, Consumer Advocates are usually people with experience as patients in the mental health system. They can be effective in helping patients raise issues of concern with members of the hospital staff, but they are unlikely to be able to resolve issues such as whether a patient should be discharged, or major concerns about the standard of patient care that challenge decisions of medical staff. However, Consumer Advocates can help you contact bodies such as the [Health Care Complaints Commission](#), and they will often go to Mental Health Review Tribunal hearings with patients. If you do not know who the Consumer Advocate or Patient Representative is in the hospital, ask the nurse unit manager or the hospital social worker.

Disclaimer

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Part 4 Section J: Disclosure of information under the *Mental Health Act 2007 (NSW)*: the role of the Primary Carer

Normally, if information about your care and treatment is given to anyone other than you, without your clear permission, this would be a breach of confidentiality and a [breach of information privacy principles](#). However, the *Mental Health Act 2007 (NSW)* allows for certain information to be given to a person who is your Primary Carer.

You can choose who you want to be your Primary Carer. If you don't choose, then a person will be considered to be your Primary Carer because of their particular relationship to you.

In this section you can find out about:

- [How you can appoint a Primary Carer, if you want to do this](#)

- [Who will be your Primary Carer if you don't appoint someone](#)
- [What information can be given to a primary carer?](#)

4J.1: Appointment of a 'Primary Carer'

The *Mental Health Act 2007* (NSW) allows you to appoint a person as your 'Primary Carer'. Once appointed, your [Primary Carer will automatically be given particular information about you, without you having to consent each time the information is provided](#).

The Act also provides that the following people could be deemed to be your 'Primary Carer' unless you advise the Hospital in writing otherwise:

- Your wife, husband or de facto partner, 'if the relationship ... is close and continuing'.
- A person who is primarily responsible for providing support or care to you (other than as a paid carer).
- A close friend or relative.

If you have a guardian, then that person will be your Primary Carer.

If you are under 14 years old your parents will be your Primary Carers. The *Mental Health Act 2007* (NSW) says when you are 14 you can nominate your own Primary Carer but also says if you are over 14 you will not be able to exclude your parents or legal guardians from receiving information about you until you are 18.

You can at any time change or cancel your nomination of a Primary Carer or your decision to exclude someone from being your Primary Carer. This decision by you will be effective and should be respected unless your treating doctors think that you do not have the capacity to make this decision or that it exposes you to risk of serious harm.

Your nomination of a person as your Primary Carer only lasts 12 months so you should make sure your intentions are clear and in writing every time you are admitted to hospital under the *Mental Health Act 2007* (NSW).

There are forms available for nominating or changing details of who is your Primary Carer. Ask a staff member at the hospital for the form.

4J.2: What information can be given to your Primary Carer?

Your Primary Carer will be told:

- if you leave the facility without permission or fail to return at the end of a period of leave;
- if it is planned to transfer you to another mental health facility or other health facility;
- if you are discharged from the mental health facility;
- if you are re-classified as a voluntary patient;
- if you are made an involuntary patient;
- if the hospital wants to apply to the Mental Health Review Tribunal for permission to give you electro-convulsive therapy (ECT) or for a decision about whether you are [capable of giving informed consent to ECT](#);
- if a surgical operation is performed on you without your consent under the *Mental Health Act 2007* (NSW);
- if the hospital or medical team wants to apply to the Director-General of NSW Health or the Mental Health Review Tribunal for consent to perform a [surgical operation or special medical treatment](#) on you.

Your Primary Carer has a right to get a list of medication you have been given as an involuntary patient and under a Community Treatment Order.

The *Mental Health Act 2007* (NSW) also states that the Primary Carer should be consulted about the discharge plan for your release from hospital.

If you want a particular person to be told about aspects of your care and treatment including having access to otherwise confidential information about you, then you should make sure that you nominate that person as your Primary Carer.

If you do not want a particular person or certain people told, then you should make sure that the hospital has in writing your express wishes about this, especially if that person is your spouse or partner, a carer, or someone else normally close to you.

Disclaimer

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Part 4 Section K: Mental illness and the criminal justice system

If you have a mental illness and have been arrested or charged in relation to a criminal offence, you may need to know about how the criminal justice system deals with mental illness.

When the criminal offence is a more serious criminal offence you will generally be dealt with in the higher courts: the District or Supreme Court. This section of the Manual describes how those higher courts can deal with mental illness in relation to crime. [Less serious offences are dealt with by the Local Courts](#).

If you have a mental illness and the question of your fitness to stand trial has been raised, or you have been found 'not guilty by reason of mental illness' (NGMI), you may be referred to the Mental Health Review Tribunal. Depending on the Court's determination, you may also become a 'forensic

patient' in NSW, click [here](#).

For those who are not forensic patients, if you are on remand or serving a sentence in jail and have been transferred to a mental health facility, you will be considered to be a 'correctional patient'. For more about correctional patients, click [here](#).

In this section you can find out about:

- [Who are 'forensic patients'](#)
- [What it means to be 'fit to be tried'](#)
- [Special Hearings and verdicts from these hearings](#)
- [What it means to be 'not guilty on the ground of mental illness'](#)
- [Legal representation in the courts](#)
- [Role of the Mental Health Review Tribunal in criminal cases involving people with mental illness](#)
- [Who are 'correctional patients'](#)
- [Leave for forensic patients and correctional patients](#)
- [Visits to 'forensic patients'](#)

4K.1: Forensic patients

Forensic patients are people who fit into one of the following categories:

- People who have been found unfit to be tried for an offence (whether or not a special hearing has been held) and ordered to be detained in a correctional centre, mental health facility or other place.
- [People who have gone through a criminal trial or a special hearing](#) and are ['not guilty on the grounds of mental illness'](#).

If you are a forensic patient on the basis that you are not guilty on the grounds of mental illness or you are unfit to be tried, then the [Mental Health Review Tribunal has a role in reviewing your situation](#).

Generally, forensic patients are kept in a prison or a hospital, but may be released subject to conditions or unconditionally) under an order from the Mental Health Review Tribunal.

4K.2: Fitness to be tried

At any time after the police charge a person with a criminal offence, questions may be raised as to whether a person is 'fit to be tried' for committing that offence. This is not about the accused person's physical fitness, but rather their mental or intellectual capacity and it will depend on their ability to understand what will happen in the court process, to tell their version of what happened and to tell their legal representatives how they want to be represented. Fitness to be tried may be affected by a range of conditions including: mental illness, intellectual disability or brain damage.

The question of whether or not you are fit to be tried is usually raised when you go before a magistrate in a Local Court in order to be charged with an offence, but it can be raised at *any time* either by the prosecution or by your lawyers, or even by the Judge. If there is a question about whether or not you are fit to be tried, a special court proceeding will be held before a Judge. This inquiry is only for the purpose of deciding if you are fit to be tried, and will not look into anything else.

The court will conduct this part of the criminal process as an inquiry rather than as an adversarial process. If the Judge decides you are fit to be tried, a normal criminal trial will then take place. If the Judge decides you are not fit to be tried, you may be able to be released from custody on bail and your case will be reviewed by the Mental Health Review Tribunal. For more about this, click [here](#).

If you want to be released on bail, you should tell your solicitor before the court hearing so a proper application can be made.

4K.2.1: Unfit to be tried by the court

If it is decided that you are unfit to be tried, the Mental Health Review Tribunal will then consider if you are likely to get better and become 'fit' to stand trial in the next 12 months.

If the Tribunal decides that you are likely to become fit, then it must also decide whether you are suffering from a mental illness or mental condition for which treatment is available in hospital, and whether you should be detained in a hospital.

The Tribunal will tell the court what it has decided, and the court can then decide whether you should go to hospital. Your views should be considered at this point in the process. If you think you are not mentally ill, or you object to detention, or if there is no treatment available for your condition, the court can make an order that you be detained somewhere other than a hospital.

If you are ordered to be detained, you will become a Forensic patient. Your care, treatment and detention will then be reviewed by the Tribunal.

If the Tribunal decides that you may *not* be fit to be tried within 12 months, you cannot be dealt with in an ordinary criminal trial. If you later become fit to be tried, the Mental Health Review Tribunal notifies the Court. If the Director of Public Prosecution decides that you are fit to plead the court will hold a special hearing to decide on whether or not you are guilty. For more about special hearings, [click here](#).

The Mental Health Review Tribunal reviews of forensic patients are to take place every 6 months, but this can be extended to 12 months. If you only want 12 month reviews, you should tell the Tribunal at the review.

4K.2.2: Special hearings

The process of dealing with people who will not become fit to be tried within 12 months is called a 'special hearing' to reflect the fact that the evidence available to the court will be limited because the accused is not fit to be tried.

A special hearing is not recorded as a criminal trial, and one of four verdicts (decisions) can result from a special hearing:

- [not guilty](#)
- [not guilty on the grounds of mental illness](#)
- [that on the limited evidence available, the accused committed the offence](#)
- [that on the limited evidence available, the accused committed an alternative offence](#)

Special hearings are usually held by a judge, although you can choose to have a jury.

If you have to face a special hearing, a lawyer must represent you, unless the Court otherwise allows. Your lawyer will be able to give you advice about whether or not you should ask to have a jury involved in the special hearing.

For more about special hearings, click [here](#).

4K.3: The verdicts from a special hearing

There are four possible verdicts (decisions) from a special hearing. There is information about these below.

4K.3.1: Not guilty

If you are found not guilty you will be acquitted (allowed to go free), just like in an ordinary criminal trial.

4K.3.2: Not guilty on the grounds of mental illness

If this is the verdict of the court as a result of the special hearing, you will be treated exactly the same as someone who was found not guilty by reason of mental illness at a normal criminal trial. The Court may order that you be detained in a hospital or any other place. If the court is satisfied that your safety and that of the public would not be put at risk, then the Court may order your release (either subject to conditions or unconditionally).

If you are ordered to be detained or released subject to conditions then you will become a forensic patient and your care and treatment will be reviewed regularly by the Mental Health Review Tribunal.

4K.3.3: That an offence was committed

If the special hearing finds that you committed the offence (or an alternative to that offence), the court will decide on a penalty, just as it would in an ordinary criminal trial.

If the Court would have given you a sentence had it been an ordinary criminal trial, then it will set an equivalent term 'limiting term'. At this point the Court may make an order for your detention in a hospital or other place and you will be referred to the [Mental Health Review Tribunal](#). The Tribunal will make a report to the court on:

- whether you are suffering from a mental illness; and/or
- whether you are suffering from a mental condition, and if so whether treatment is available in a hospital and whether or not you object to being detained in a mental health facility.

The court will consider these recommendations and may make an order about whether or not you should be detained in a hospital or in another place.

If you are given a limiting term and detained you will become a forensic patient and your care and treatment will be reviewed regularly by the [Mental Health Review Tribunal](#).

At the end of the limiting term, you will no longer be a forensic patient and you will be released. However, if you are still a mentally ill person under the *Mental Health Act 2007* (NSW), the Tribunal may make you an involuntary patient and deal with you in the same way as any other person who is mentally ill under that Act.

4K.3.4: Found 'fit to be tried' while serving a limited term

If you later become fit to be tried, the Mental Health Review Tribunal notifies the Court.

If the Tribunal finds that you are fit to plead the Director of Public Prosecution can decide whether to continue or not. If found fit by the Court at a further inquiry you will no longer be a forensic patient and an ordinary criminal trial will take place.

4K.3.5: Is there a criminal conviction recorded if a person is not fit to be tried?

Where a court and the Mental Health Review Tribunal have decided you are not fit to be tried, even if you are later found at a special hearing to have committed an offence, sometimes a criminal conviction will be recorded.

There may be several outcomes from a special hearing. That the Court will:

- find you have committed an offence;
- that you are not guilty by virtue of mental illness (NGMI);
- that you are not guilty;
- that you have committed another offence.

4K.4: Not guilty of a crime on the grounds of mental illness

A person may have committed a crime when they were affected by mental illness but by the time the criminal trial takes place, they may be no longer affected by the mental illness. This means the person is fit to be tried. However, that doesn't mean that the episode of mental illness is irrelevant.

In this situation, the person's lawyer may argue that the person should be found not guilty on the grounds of mental illness because their behaviour at the time the crime was committed was affected by mental illness such that:

- The accused didn't know what they were doing
- The accused didn't know that what they were doing was wrong

If this is the verdict, the Court may order that you be detained in a hospital or any other place. If the Court is satisfied that your safety and that of the public would not be put at risk, then the Court may order your release (either subject to conditions or unconditionally).

If you are ordered to be detained or released subject to conditions then you will become a forensic patient and your care and treatment will be reviewed regularly by the Mental Health Review Tribunal.

4K.5: Representation in the courts

If you are facing a criminal trial and are either currently mentally unwell or were mentally unwell at the time of the alleged crime, you should get legal representation. You should contact Legal Aid NSW to get advice and apply to Legal Aid NSW for one of its lawyers to either represent you directly or make a grant of legal aid so you can have a private lawyer represent you. To find out more about legal aid, click [here](#).

If you are Aboriginal or Torres Strait Islander, you should contact the Aboriginal Legal Service (NSW/ACT) to find out about legal representation. To find out about how to get in touch with the Aboriginal Legal Service, click [here](#).

4K.6: Review of forensic patients by the Mental Health Review Tribunal

The Mental Health Review Tribunal can make decisions about detention, leave and release for forensic patients.

Mental Health Review Tribunal reviews of forensic patients are to take place every six months but this can be extended to 12 months. If you only want 12 months reviews, you should tell the Tribunal at a review.

When the Tribunal reviews your case, it can make orders about:

- your continued care and treatment;
- your detention or transfer to hospital, prison or other facility;
- leave from the facility in which you are detained: and
- your release (either unconditionally or subject to conditions).

In the case of those forensic patients found unfit to be tried (either on remand or serving a limiting term) the Tribunal will also consider your fitness to be tried on each occasion, and report to the Court should you become fit to stand trial.

4K.6.1: Representation of forensic patients at Mental Health Review Tribunal reviews

The Mental Health Advocacy Service provide free legal services to forensic patients when they are being reviewed by the [Mental Health Review Tribunal](#). As a forensic patient, you can choose instead to have a private lawyer represent you, but you will have to pay for them yourself.

4K.7: Correctional patients

Before changes were made in 2008 to the *Mental Health Act 2007* (NSW), all prisoners who were being treated for a mental illness in prison were called 'forensic patients'. They are now called 'correctional patients'.

'Correctional patient' refers to prisoners who have been transferred to a 'declared' hospital or unit for treatment for mental illness or mental condition.

If you are a prisoner and develop a mental illness or mental condition while in prison or are diagnosed with a mental illness while serving a sentence or on remand, you can be ordered to be transferred to a hospital, but only if two medical practitioners (one of whom must be a psychiatrist) certify that you are mentally ill under the [Mental Health Act \(NSW\)](#) or are a person with a mental condition.

The Mental Health Review Tribunal must review your case as soon as practicable, and make a recommendation about your continued detention, care or treatment.

4K.8: Leave for forensic patients

The Director-General of NSW Health may grant leave for forensic in emergencies or special circumstances, such as to attend a family funeral. If you are a forensic patient and the Director-General has refused an application for leave, you can appeal against this decision to the Mental Health Review Tribunal.

The Mental Health Review Tribunal has the power to grant leave if it is satisfied that your safety and the safety of the public would not be at risk. This leave is usually granted in stages, i.e:

- escorted leave with you being accompanied by a staff member of the facility in which you are detained (eg nurse);
- supervised leave with you being accompanied by an approved supervisor (eg a relative or friend who has undertaken the hospital's supervisor training program);
- unsupervised leave with you allowed to leave the facility for a specific purpose for a specific period unaccompanied.

4K.9: Release of Forensic Patients

If you are a forensic patient and you are to be granted leave from a mental health facility, the authorised medical officer (AMO) must:

- Take all reasonably practicable steps to consult your primary carer (if you have one); and
- Take all reasonably practicable steps to ensure that you and your primary carer are provided with appropriate information as to follow-up care.
- The AMO must give you and your primary carer an oral explanation and written explanation of your legal rights and responsibilities under the Mental Health Act.
- If you have difficulty understanding English, the AMO must provide an oral explanation in another language.

4K.10: Responsibilities of the Authorised Medical Officer (AMO)

When you are to be released, the authorised medical officer must take all reasonably practicable steps to consult with the agency responsible for your care and treatment, as well as your primary carer and any dependents involved.

Therefore, when considering applications for your release from a mental health facility, the Mental Health Tribunal will need to ask whether the necessary steps have been undertaken by the authorised medical officer.

If you are a forensic patient the MHRT can grant release subject to certain conditions or unconditionally only if satisfied as to your safety and treatment in the community when the applicant for release gives the AMO a written assurance that you will be properly taken care of, and that you are no risk to yourself or others if released.

The MHRT must also have an independent report, and for the limiting term have regard to the time already spent in custody. They cannot order release if you are still on remand.

4K.11: Ceasing to be a Forensic Patient

You cease to be a forensic patient at the end of a "limiting term" unless unconditionally released by the Mental Health Review Tribunal beforehand.

If a court would have imposed a sentence of imprisonment on you, it must indicate a "limiting term" which is the best estimate of the sentence, based on applying general sentencing rules, that the court would have considered appropriate if the special hearing had been a normal trial in which you had been found guilty.

However, if the Mental Health Review Tribunal considered that you have a mental illness or other mental condition, and you are considered "unfit to stand trial" the court may order you to be sent to a mental health facility or other place, which in NSW is usually prison. You will generally be released at the end of the limiting term, unless released earlier by the Mental Health Review Tribunal.

If you are no longer a forensic patient you must be discharged from a mental health facility unless the Mental Health Review Tribunal have classified you as an involuntary patient because you have a mental illness or other mental condition and that you should be treated under the *Mental Health Act 2007* (NSW).

If at the end of a sentence or non-parole period you are still unwell and need treatment, the MHRT may make you an involuntary patient and you will be treated the same as any other person under the Mental Health Act.

4K.12: Leave for Correctional Patients

In relation to leave while in the hospital, the Commissioner for Corrective Services has this power for correctional patients, and the MHRT can make recommendations as to leave for his consideration.

If you are a Correctional Patient you can be sent back to prison at any time once you are well enough.

4K.13: Visits to forensic and correctional patients

If you are a forensic patient or a correctional patient in the prison system, including the prison hospital in Long Bay Correctional Centre, your visits are regulated like visits to other prisoners. [Click here for more information about visits to NSW prisons.](#)

If you are a forensic patient in a hospital such as the Long Bay Forensic Hospital or Morisset Hospital, you can have visitors. However, the hospitals can restrict who visits you if they decide that a particular visitor is disruptive, a threat to security or their visits are having a negative affect on your recovery. This can mean an outright ban on that person visiting, or it might mean that there is supervision by hospital staff of any visits by that person.

To visit the Long Bay Forensic Hospital, you will need to prove your identity and there is a list of items you cannot take into the Hospital on a visit. [To find more information, click here.](#)

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Chapter 5 - Substitute Decision Making

Part 5 Section A: Overview

In this overview, there is important information about some of the terms used in this part of the Manual. It is useful to read this section before you read other sections of this part. It may also be useful to refer back to it when you are reading about different types of substitute decision-making later in this part).

This overview includes pages on the following topics:

- [What is substitute decision-making?](#)
- [Capacity](#)
- [What is a guardian?](#)
- [Financial management](#)
- [Who deals with substitute decision-making in NSW?](#)

5A.1: What is substitute decision-making?

If for some reason you lack the ability to make some decisions, it is said that you lack capacity to make those decisions. [The lack of capacity may be because of a long-term disability, such as intellectual disability, or short-term injury or illness, such as a stroke or acute mental illness.](#)

Under limited circumstances, the law gives one person or body the legal power to make a decision on another person's behalf. This is called substitute decision-making.

In some circumstances, the law says you will need someone to be legally appointed to make decisions on your behalf. This person or body is called a guardian for decisions other than decisions about your [money or assets](#). [A financial manager is appointed to make decisions about your money or property that you own.](#)

A guardian or financial manager is often appointed because your family members or carers cannot agree about what decision should be made about you or who should make a decision. Alternatively, a guardian or financial manager is appointed because you do not have someone close to you who can help you to make particularly important decisions.

Your guardian and your financial manager may be two different people or may be the same person.

Most people in the community who have some level of incapacity are supported to make decisions by their family, friends and carers. These people may help by guiding the person so they can understand the nature of the decision, the consequences and options, and may support the person as they weigh up these options and decide for themselves. In these situations, there is no need for a legally appointed guardian, or 'substitute decision-maker'. This is called **'assisted decision-making'** rather than substitute decision-making.

5A.2: Capacity

Capacity is a term that is used to describe your ability to make your own decisions. These may be small decisions, such as what to do each day, or bigger decisions, like where to live or whether to have an operation. You may lack capacity in some areas, but still be able to make other decisions.

A person could lack capacity to make some decisions for a short time only because of mental illness or they could have an ongoing lack of capacity to make some decisions in their life because of an intellectual disability.

Whether the law says you lack capacity often depends on the type of decision and how big the decision is.

The NSW Department of Justice and Attorney General has produced a book to help people understand and assess capacity. This book is called *The Capacity Toolkit*. You can get free copies of *The Capacity Toolkit* from the Department's Diversity Services. [Click here to download the Capacity Toolkit.](#)

5A.3: What is a guardian?

A guardian is someone legally appointed to make decisions for a person who lacks capacity.

In NSW, guardians do not deal with financial decisions.

The Guardianship Tribunal can appoint guardians or a person with capacity can appoint their own [Enduring Guardian](#).

For more about guardianship, [click here](#).

5A.4: Financial management

Decisions about your financial matters, which means decisions about spending or saving your money, your property and its maintenance, and dealing with any other assets you own, are dealt with separately from guardianship.

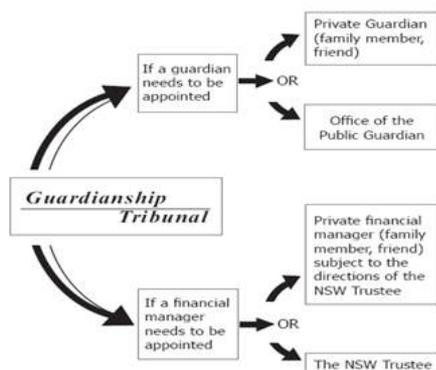
Substitute decision-making about your financial affairs only can come after a Financial Management Order is made, unless you gave Power of Attorney to another person when you had capacity. A Financial Management Order is a decision of a tribunal or court to appoint the NSW Trustee and Guardian, or a private individual under the directions and authority of the NSW Trustee and Guardian, to manage your financial affairs.

For more about financial management, click [here](#).

5A.5: Who deals with substitute decision-making?

There are several main organisations that deal with substitute decision-making in NSW.

The first is the Guardianship Tribunal. There is also a Public Guardian and the NSW Trustee. The picture below shows the relationship between these organisations.



The **Guardianship Tribunal** makes guardianship and financial management orders and also sometimes decides whether or not someone can have an operation or a medical or dental procedure. For more about the Guardianship Tribunal, click [here](#).

The Guardianship Tribunal can appoint the **Public Guardian** as your guardian if you have a disability (such as mental illness). For more about the Public Guardian, click [here](#). (Friends, relatives and carers can also be appointed as private guardians; for more about this, click [here](#).)

The Guardianship Tribunal can appoint the **NSW Trustee and Guardian** by the Guardianship Tribunal as your financial manager if you have a disability (such as mental illness). The NSW Trustee and Guardian also manage wills and powers of attorney for the general community. For more about the NSW Trustee and Guardian, click [here](#).

The **Mental Health Review Tribunal** (MHRT) can also make financial management orders if you are an involuntary patient under the *Mental Health Act 2007* (NSW). For more about this, click [here](#).

'Persons responsible' can also, in certain circumstances, consent to medical and dental procedures on your behalf if you lack capacity to consent. For more about this, click [here](#).

You can appoint an **enduring guardian** at a time when you have capacity (fearing that you may lose capacity at some time in the future). An Enduring Guardian has the same legal authority as guardians appointed by the Guardianship Tribunal. For more about enduring guardianship, click [here](#).

If you grant someone your **enduring power of attorney** when you have capacity to do this, that person can make substitute financial decisions on your behalf. For more about enduring powers of attorney, click [here](#).

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Part 5 Section B: Guardianship

This section is about guardianship. It has information on:

- [Who can be appointed as guardians](#)
- [The powers and functions of guardians](#)
- [Length of guardianship orders](#)
- [The Public Guardian](#)
- [Enduring guardianship](#)
- [Review of guardianship orders](#)

5B.1: Who can be appointed as guardians

Anyone over 18 years of age with capacity can be appointed as a guardian. The Guardianship Tribunal can appoint a single guardian, joint guardians and alternative guardians. The guardian must be willing and able to carry out the duties of a guardian and must be considered suitable for appointment by the Guardianship Tribunal.

If it decides that you need a guardian, the Guardianship Tribunal can appoint a family member or friend as your guardian (called a 'private guardian'), or the

Public Guardian if there is no-one else suitable.

The guardianship order made by the Guardianship Tribunal will spell out the guardian's authority (what decisions the guardian can make on your behalf) and how long they are appointed your guardian for.

Click here for more information about hearings before the [Guardianship Tribunal](#).

Enduring guardians can be appointed by an adult with capacity. Click here for information about [enduring guardians](#).

5B.2: The powers and functions of guardians

In most cases, guardians are appointed with specific powers or functions. This means that the guardian can make decisions in specific areas of a person's life. The most common areas are:

- Accommodation: deciding where the person should live;
- Health care: deciding what medical and dental health care providers the person should see;
- Consent to medical and dental treatment: acting as the person's substitute decision-maker about medical and dental treatment proposed for them by others; and
- Services: authorising others to provide personal services (such as home care) to the person (usually to assist them to live in their own home).

Private Guardians and enduring guardians don't have to report to the Guardianship Tribunal. The Tribunal doesn't supervise guardians or review decisions that have been made by guardians.

If you have a guardian, it is most likely that the guardianship orders say your guardian, in exercising their decision-making powers, should involve you in decision-making by:

- taking all reasonable steps to help you understand what your guardian is taking into account when making decisions for you;
- getting your views and taking them into account when they are making significant decisions on your behalf.

Your guardian should always give you information about the decision that they are going to make in language that you can understand. The guardian has to take into account your views, but there is no legal obligation on the guardian to do what you want.

If you have concerns about the actions or decisions of a guardian, you can [apply to the Guardianship Tribunal to have the appointment reviewed](#).

5B.3: Length of guardianship orders

Guardians appointed by the Guardianship Tribunal are appointed for a set period of time. Initial orders can only be made for up to one year at a time. In the case of an order that is renewed the period must not exceed three years from the date when it was renewed.

The Guardianship Tribunal must review the guardianship order before it ends unless it decided, when it made the order, that there is no need for a review. In this case, the order will automatically finish at the end of the period set out in the order.

At the review hearing, the Guardianship Tribunal will decide whether or not to make the order for a further amount of time.

In certain circumstances, the Tribunal can make an initial order for up to three years and renew a guardianship order for up to five years from the date of renewal. Such longer orders can only be made if the person concerned has permanent disabilities, it is unlikely they will regain the capacity to make their own decisions and there is a need for a longer guardianship order.

For more about reviews of guardianship orders by the Guardianship Tribunal, click [here](#).

Enduring Guardianship appointments do not take effect unless the person loses capacity. Once this has happened, the appointment is long-term and not time limited.

5B.4: The public guardian

The Public Guardian is a public official appointed by the Guardianship Tribunal or the Supreme Court under the *Guardianship Act 1987* (NSW).

The Public Guardian is part of the NSW Department of Justice and Attorney General, and is different from the NSW Trustee and Guardian. The NSW Trustee and Guardian makes financial decisions for a person under the *NSW Trustee and Guardian Act 2009* (NSW).

The Public Guardian is appointed when there is no other suitable person willing or able to take on the role of your guardian. You can ask to have this appointment reviewed by the Guardianship Tribunal; for more about this, click [here](#).

If you are unhappy about a decision made by the Public Guardian, you can ask for the decision to be reviewed and if you are still not happy, you can ask the Administrative Decisions Tribunal to review the decision. For more about this review process, [click here](#). For information about reviews by the Administrative Decisions Tribunal, [click here](#).

As well as making guardianship decisions, the Public Guardian provides information to the public about guardianship. The Public Guardian also operates the Public Guardian Support Unit, which provides information and support to other guardians in NSW. Both services can be contacted through a telephone enquiry line: 1800 451 510 or by email at: informationssupport@opg.nsw.gov.au or write to the Private Guardian Support Unit Locked Bag 5116, Parramatta NSW 2124

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

The Public Guardian says that it will try wherever possible to make the decision that you would have made for yourself, and where that isn't possible, to make a decision that is in your best interests. To do this, staff from the Public Guardian will need to talk to you, service professionals, your family members and friends. To understand your needs, the Public Guardian can ask that you be assessed, or may ask for your health and medical reports. The Public

Guardian may also advocate for better options for you.

The contact details for the **NSW Public Guardian** are:

Urgent decisions after hours: (02) 8688 2650

Toll free* outside Sydney area: 1800 451 510

TTY: 1800 882 889

Information and Support: (02) 8688 6070

Private Guardian Support Unit: (02) 8688 6060

E-mail: informationssupport@opg.nsw.gov.au

Website: <http://www.lawlink.nsw.gov.au/opg>

Public Guardian: Western Regional Office

Street address: Justice Precinct Offices

160 Marsden Street

PARRAMATTA NSW 2150

Postal address: Locked Bag 5116

PARRAMATTA NSW 2124

Phone: (02) 8688 2650

Fax: (02) 8688 9797

Freecall*: 1800 451 510

Public Guardian: Southern Regional Office

Street address: Level 2, Downing Centre

143-147 Liverpool Street

SYDNEY NSW 2000

Postal address: PO Box 20487

WORLD SQUARE SYDNEY 2002

Phone: (02) 9287 7660

Fax: (02) 9287 7355

Freecall*: 1800 451 428

Public Guardian: Northern Regional Office

Street address: Level 3, 4 Watt Street

GOSFORD NSW 2250

Postal address: PO Box 487

GOSFORD NSW 2250

Phone: (02) 4320 4888

Facsimile: (02) 4320 4818

Freecall*: 1800 451 694

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

5B.5: Enduring guardianship

If you think you might lose capacity to make decisions in the future, you can appoint an enduring guardian to make decisions for you if and when this happens. An enduring guardian can make decisions on your behalf about everything except your financial matters.

Adults who have capacity to make their own decisions can appoint an enduring guardian to make decisions, if in the future they can no longer make their own decisions. If you have capacity, you can appoint someone as your enduring guardian by completing a form and having it witnessed by a lawyer or the registrar of a Local Court. You can change your mind later and cancel ('revoke') the appointment of a person as your enduring guardian, so long as you have capacity when you do this.

[For more information about enduring guardians or to download the relevant forms \(including a revocation form\), click here.](#)

A person can appoint more than one enduring guardian. The appointment is not time-limited, and can only be revoked by the person making the appointment while they still have capacity. If the person has lost capacity only the Guardianship Tribunal can revoke the appointment.

It is probably best to get a lawyer to give you advice about the process of appointing an enduring guardian. For more about getting legal advice, click [here](#).

If you are going to appoint someone as your enduring guardian, it is a good idea to get a certificate from a doctor saying that you have the capacity to complete the form and appoint an enduring guardian at the same time as you complete the form. You should keep this certificate with a copy of the form.

Enduring guardianship appointments are not registered and the Guardianship Tribunal does not supervise enduring guardians. If anyone has concerns about the actions or decisions of an enduring guardian they can make an application to the Guardianship Tribunal for a review of the appointment.

Enduring guardianship is not the same as an 'enduring power of attorney'. If you give another person your enduring power of attorney, this means that you are giving that person power to manage your finances if you lose capacity, but not to make other decisions on your behalf. If you appoint someone as your enduring guardian, that person cannot make decisions on your behalf about financial matters, but can make other decisions.

[Click here for more about enduring guardians or to download standard forms.](#)

5B.6: Review of guardianship orders

- The Guardianship Tribunal has the power to review various aspects of guardianship;

- Whether or not to make a new guardianship order or extend an existing guardianship order before it runs out;
- The appointment of a guardian, including the Public Guardian or an enduring guardian.

Click here for more information about hearings of the [Guardianship Tribunal](#).

If you are unhappy with the appointment of the Public Guardian and want to have the appointment reconsidered, or you want to help a person under guardianship to do this, you can ask for a review by the Guardianship Tribunal, appeal to the Administrative Decisions Tribunal or to the Supreme Court. There are some costs associated with both of these processes.

If you appeal to the Administrative Decisions Tribunal, the appeal must be made within 30 days of getting a copy of the guardianship order and the reasons for the decision from the Guardianship Tribunal. The Administrative Decisions Tribunal also has power to review decisions made by the Public Guardian.

For more about the range of decisions that the Administrative Decisions Tribunal can review and how to apply for a review, [click here](#).

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Part 5 Section C: Financial management

A financial manager is a [substitute decision maker](#) for financial decisions only.

In this section you can find out more about:

- [When a financial manager will be appointed](#)
- [What powers a financial manager has](#)
- [The Public Trustee and Guardian's role as financial managers](#)
- [Enduring powers of attorney](#)
- [Powers of the Mental Health Review Tribunal to make financial management orders](#)
- [Powers of single members of the Mental Health Review Tribunal to make financial management orders](#)
- [Review of financial management decisions](#)
- [Challenging a financial management order](#)

5C.1: When will a financial manager be appointed?

A financial manager may be appointed when a person lacks the capacity to make decisions about their own financial matters. The process to appoint a financial manager starts when:

- a person applies to the Guardianship Tribunal to be the financial manager of another person or;
- a person or a health provider or an organisation applies to the Guardianship Tribunal to have someone else appointed as the financial manager for another person.

The Guardianship Tribunal will then hold a hearing. At the Guardianship Tribunal hearing of a financial management application, the Tribunal will decide whether a financial manager is needed and who should be the financial manager. Click [here](#) to find out more about hearings in the Guardianship Tribunal.

The Tribunal will appoint a financial manager only if there is evidence that the person who is the subject of the application:

- is incapable of managing their own financial affairs; and
- needs an appointed substitute decision-maker to make financial decisions on their behalf.

If the application is about you, the Tribunal must also be satisfied that it is in your best interests to make a financial management order for you. If your personal financial decisions can be made by you with help from someone else and in your best interests, the Tribunal will not necessarily appoint a financial manager.

The Tribunal can appoint a family member or friend who is over 18 years old as your financial manager. The *Trustee and Guardian Act 2009* (NSW) requires that this person obeys the directions and authorities issued by the NSW Trustee.

However, the Guardianship Tribunal usually appoints the NSW Trustee and Guardian as the financial manager.

Most financial management orders have no time limit on them. However, [the Guardianship Tribunal can review a financial management order on request or if it decides that the order should be reviewed within a particular time](#).

The Guardianship Tribunal can also make an **Interim Financial Management Order**. An Interim Financial Management Order is for a specified length of time up to six months. These orders protect a person's financial affairs while information is being gathered about their capacity to manage their own affairs.

The Mental Health Review Tribunal can also appoint a financial manager for you if you are an involuntary patient under the [Mental Health Act 2007 \(NSW\)](#). This order continues to have effect after you stop being an involuntary patient.

5C.2: What powers does a financial manager have?

The person appointed as your financial manager has the authority to make decisions about all of your financial affairs, including the authority to operate your bank accounts, pay your bills, make investments for you and approve payments for items or services you may need. Your financial manager is able to make decisions in legal proceedings on your behalf and to ensure your interests are protected in legal matters.

In limited circumstances, the Guardianship Tribunal and the Mental Health Review Tribunal can exclude part of a person's estate (money and property) from the financial management order, which means you keep control of part of your financial affairs and the financial manager has authority over the rest of the estate.

If a financial management order is made, it stops the operation of any power of attorney, including an [enduring power of attorney](#) that you may have put in place earlier.

Financial managers can charge a fee to manage your finances. If the Public Trustee and Guardian is appointed as your financial manager, they will always charge a fee to manage your financial affairs. [Click here to find information about the fees charged by the Public Trustee and Guardian.](#)

5C.3: The Public Trustee and Guardian: role as financial managers

The financial management role of the NSW Trustee and Guardian was until very recently carried out by the Protective Commissioner. The functions of the Protective Commissioner have been taken over by the NSW Trustee and Guardian but there are likely to still be lots of valid financial management orders appointing the Protective Commissioner as financial manager.

The NSW Trustee and Guardian have the same powers as private financial managers.

Please note: Fees apply to have a private financial manager or the NSW Trustee and Guardian manage your financial affairs.

[Click here to find contact details and office locations for the NSW Trustee and Guardian.](#)

5C.4: Enduring power of attorney

If you give someone your 'power of attorney', they can make financial decisions on your behalf, for example, they can decide to sell your house and can operate your bank account.

In NSW, you can have a document that says that another person can have your power of attorney in the future, but only if and when you lose capacity to make those decisions for yourself. This is called an 'enduring power of attorney'.

A power of attorney granted in NSW may not be recognised in all Australian states and territories. If you have property in other states or territories, then you should get legal advice as to whether the granting of the power of attorney will be valid where you have property or other assets. You may have to prepare another enduring power of attorney document for that state or territory.

If at all possible, you should get legal advice, and have a lawyer prepare the document granting an enduring power of attorney. This document should be registered if the attorney is to deal with real estate, for example if the attorney is to sell it. Click [here](#) to find out about getting legal help .

The NSW Trustee and Guardian can also give you advice about preparing and registering an enduring power of attorney. The NSW Trustee and Guardian will charge you for this service. [Click here for more information.](#)

The Guardianship Tribunal can review, and even cancel, enduring powers of attorney.

The Guardianship Tribunal will consider intervening if you think that the person you have granted your enduring power of attorney is not acting in your best interests. If you think this is happening, it is best to write to the Guardianship Tribunal setting out your concerns. If the situation is urgent, you should contact the Tribunal immediately:

Freecall*: 1800 463 928

Phone: (02) 9556 7600

Telephone typewriter (TTY): (02) 9556 7634

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

When you contact the Guardianship Tribunal, you should make it clear that you think you are in danger of losing your assets or property.

The person who is exercising the power of attorney (called 'the attorney') must act in your best interests, not in their interests or in the interests of other people or organisations. For example, they are not allowed to sell your house and then use the proceeds for their own benefit or the benefit of someone else other than you.

The Tribunal has power to cancel or change the power of attorney or remove the attorney and appoint someone else in their place. It can also put back an enduring power of attorney that has lapsed because the attorney is no longer able to act.

The Tribunal can require an attorney to provide accounts, bank statements and so on, so that an audit can take place. The Tribunal can also ask the attorney to have a financial management plan.

The Tribunal can also decide whether you had capacity when you first signed the document granting the power of attorney and whether you now have capacity to manage your financial affairs. The Tribunal has power to declare the granting of an enduring power of attorney invalid if you did not have capacity at the time you signed it.

Click [here](#) for more information about hearings before the Guardianship Tribunal .

5C.5: Powers of the Mental Health Review Tribunal to make financial management orders

If you are a patient under the *Mental Health Act 2007* (NSW), then the Mental Health Review Tribunal can make a financial management order appointing the Public Trustee and Guardian to manage your financial affairs. The Tribunal can't appoint a private financial manager. The Tribunal makes this decision at a hearing. For more information about the Mental Health Review Tribunal and its hearings, click [here](#).

The Tribunal can make interim orders, which are orders that can only last for a short period of time. This is usually done so that more information can be gathered and assessed about your capacity to manage your financial affairs. The Trustee and Guardian has power to terminate a financial management order granted by the Tribunal at any time if it believes you are now capable of managing your own financial affairs.

A financial management order, except an interim order, made by the Mental Health Review Tribunal does not lapse or expire if you stop being an involuntary patient. You can, at any time, apply to the Mental Health Review Tribunal to have the financial management order cancelled ('revoked').

Unlike the Guardianship Tribunal, the Mental Health Review Tribunal does not normally give written reasons for its decisions. Financial management issues are usually dealt with at the same time as the Tribunal is dealing with other issues to do with your treatment and care. You can ask for the Tribunal to tell you the reasons for its decision, but the reasons given are not detailed. [Click here to find the form for requesting cancellation of a financial management order and other information about the Mental Health Review Tribunal and financial management](#).

5C.6: Powers of visiting single members of the Mental Health Review Tribunal to make financial management orders

Single members of the Mental Health Review Tribunal conducting mental health inquiries have the same powers as the full Mental Health Review Tribunal to make financial management orders for people who are made involuntary patients. For more about these powers, [click here](#).

5C.7: Review of financial management decisions

You can ask for a review of a decision from the Guardianship Tribunal to appoint a financial manager or of the terms of a financial management order. You can do this by writing to the Guardianship Tribunal. The Guardianship Tribunal has power to hold a hearing to review a guardianship order or financial management order. This is called a 'review of the order'.

[Click here for information about the Guardianship Tribunal](#).

5C.8: Challenging a financial management order

If you are not happy with a financial management order made by the Mental Health Review Tribunal, then you can appeal to the Administrative Decisions Tribunal or the Supreme Court.

[You are strongly advised to get legal advice before you begin this process](#).

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Part 5 Section D: The Guardianship Tribunal

In this section of the Manual, you can find out more about:

- [Who are the members of the Guardianship Tribunal](#)
- [What happens at hearings of the Guardianship Tribunal](#)
- [Being represented by a lawyer at a Guardianship Tribunal hearing](#)
- [How to get a guardianship order reviewed](#)
- [How to challenge an order of the Guardianship Tribunal](#)

5D.1: Guardianship Tribunal members

There are three types of members of the Guardianship Tribunal:

- legal members;
- professional members; and
- community members.

Legal members must be legal practitioners and have been practising law for at least seven years.

Professional members must have experience assessing or treating adults with disabilities (for example, doctors, psychologists, or social workers).

Community members must have experience with adults with disabilities.

There are a number of people appointed as members of the Guardianship Tribunal in each of these categories.

Panels made up of three Tribunal members carry out most Guardianship Tribunal hearings: one legal member, one professional member and one

community member.

A three-member panel will deal with any applications for guardianship and/or financial management orders.

In some limited circumstances, a Guardianship Tribunal hearing may be run by a panel made up of one or two Tribunal members, such as some reviews of guardianship and financial management orders. [Click here to read about hearings of the Guardianship Tribunal.](#)

5D.2: Hearings of the Guardianship Tribunal

The Guardianship Tribunal has its office in Balmain, in Sydney, and most Guardianship Tribunal hearings are held at this office. However, the Tribunal also holds hearings in other places in Sydney and in regional and rural NSW.

[The Guardianship Tribunal deals with applications for guardianship and financial management orders \(including reviews\) as well as applications to review or cancel enduring powers of attorney.](#)

Using an application for guardianship as an example, the process is usually started by someone ('the applicant') applying to the Tribunal to be appointed as another person's guardian.

Once the Guardianship Tribunal gets the application, it assesses it. Not all applications go to a formal hearing of the Guardianship Tribunal. A Tribunal staff member will contact the applicant to talk about the application and explore more informal ways of resolving the situation. In a lot of cases, the applicant withdraws the application after this discussion.

The Tribunal's staff members will also collect information about the application and prepare the application for a hearing by the Tribunal. If the application is about you, you can talk about the application with staff at the Tribunal's office and ask about the Tribunal's processes. (Family members and friends can also contact the Tribunal staff for information.)

The Tribunal can be contacted at:

Phone: (02) 9555 8500

Fax: (02) 9555 9049

Freecall*: 1800 463 928

E-mail: gt@gt.nsw.gov.au

Website: www.gt.nsw.gov.au

Street address: Level 3, 2a Rowntree Street,
BALMAIN NSW 2041

The Tribunal will send all the individuals who have an interest in the application (called the 'parties') a letter (called the 'Notice of Hearing') that sets out all the details about when and where the hearing of the application will take place. If the application goes to a hearing, the Tribunal will decide at the end of the hearing whether or not to appoint a guardian or financial manager.

The Tribunal holds its hearings as informally as possible. The hearings are not like courts where one party is 'against' another party. Instead, the focus is on deciding whether a person needs a guardian or financial manager. Hearings are run with that question in mind, rather than deciding whether anyone is 'right' or 'wrong'.

Most importantly, the purpose of the hearing is not to put you 'on trial' or to show that you have done something wrong or are not doing something properly. The Guardianship Tribunal emphasises that, although the hearing is likely to focus on you, it is not being held to criticise or punish you. Rather it is about looking at whether you need help to make decisions in particular areas of your life so that your interests are protected.

If an application to the Tribunal is about you, you should go to the hearing in person, if possible. However, you can take part in the hearing by phone if you can't get to the hearing. If you are not able to be part of the hearing, the Guardianship Tribunal will make every effort to get your views before the hearing. If you cannot be there (in person or by phone) you are strongly advised to write to the Tribunal before the hearing setting out your views. You can ask someone to help you do this, if you, for some reason, you cannot do it yourself.

Postal address: Guardianship Tribunal

Locked Bag 9

BALMAIN NSW 2041

E-mail: gt@gt.nsw.gov.au

Other people who know you and say they have an interest in your wellbeing may have relevant views or information to give to the Guardianship Tribunal, and are encouraged by the Tribunal to go to the hearing to give these views and information. This is one reason why it is important that you, as the person most affected, should put your views to the Tribunal in some way. Having Tribunal orders varied later or challenging a decision of the Tribunal later is usually much harder than changing the Tribunal's approach at the initial hearing.

You have the right to ask questions at the hearing and to bring documents to show the Tribunal. You may also ask others, such as family, friends or professionals, to come to the hearing to speak about the application. [You can also have a lawyer represent you at the hearing as long as you have permission \(called 'leave'\) from the Tribunal.](#)

You should let Tribunal staff know in advance if you need an interpreter at the hearing to help you or your family members. The staff member will then arrange for an interpreter to be at the hearing at no cost to you. This includes interpreters who can interpret for the deaf in Auslan.

Everyone at the hearing will usually be told the Tribunal's decision at the end of the hearing. Copies of the written order and the Reasons for the Decision will be sent to all the parties to the matter including you, if you are the person the order is about, and the applicant. [To find out more about Guardianship Tribunal hearings, click here to go to the Tribunal's website.](#)

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

5D.2.1: Being represented at Guardianship Tribunal hearings

Parties at the Guardianship Tribunal are allowed to have a lawyer or other advocate represent them but only with the Tribunal's permission. Most hearings are held without the people involved having legal representation.

[The Law Society of NSW](#) can give you the names of private lawyers with experience in guardianship matters.

[Legal aid may be available and there are also specialist free legal services whose solicitors are regularly involved with guardianship hearings and may be able to help, for example, the Older Persons' Legal Service](#) and the Intellectual Disability Rights Service . For more about legal services, click [here](#) . To find out more about advocacy services, click [here](#).

[To find out more about representation at Guardianship Tribunal hearings, click here to go the website to download the brochure, 'Legal representation at hearings'.](#)

5D.3: Review of guardianship orders

The Guardianship Tribunal will automatically hold a review of a guardianship order at the end of the time set for the order. The review will be done in a hearing of the Guardianship Tribunal.

However, the Tribunal may also review the order at any time if it gets a request for a review from the person under guardianship, the guardian, or any other person who has a genuine concern for the welfare of the person under guardianship.

At a review, the Tribunal may decide to:

- continue the order appointing the guardian;
- change the tasks that the guardian has under the order;
- change who will be the guardian; or
- revoke (cancel) the order if the person is now able to make their own decisions or if a guardian is no longer needed to make decisions for the person.

5D.4: Challenging decisions of the Guardianship Tribunal

If you are unhappy with a decision of the Guardianship Tribunal and you want an independent body to look at the Tribunal's decision, then you apply to the Supreme Court or the Administrative Decisions Tribunal (ADT). This is called an 'appeal from the order'.

[You are strongly advised to seek legal advice before you being an appeal.](#) Appeals are only allowed on certain legal grounds. If you lose an appeal in the Supreme Court, you are likely to have to pay the legal costs of the process. Sometimes the ADT can also order you to pay these costs.

You must appeal within 28 days of receiving the written reasons for decision. An extension may be granted in some circumstances.

For more about the range of decisions that the Administrative Decisions Tribunal can review and how to apply for a review, [click here](#).

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Part 5 Section E: Substitute consent to medical treatment

This section of the Manual is about what happens when you lack the capacity to make decisions about your medical and dental treatment. It has information on:

- [Consent to medical treatment by 'persons responsible'](#)
- [Power of the Guardianship Tribunal to consent to special medical treatment](#)
- [Powers to treat involuntary patients, correctional and forensic patients under the Mental Health Act 2007](#)

5E.1: Consent to medical treatment by 'persons responsible'

[If you don't have the capacity to make decisions about your medical and dental treatment and therefore can't give informed consent](#), the law in NSW allows another person—the 'person responsible'—to make these decisions for you.

If a doctor or a dentist thinks that you are unable to give informed consent to treatment, the medical or dental practitioner can ask the person responsible to consent on your behalf.

It is not necessary to get consent for treatment that the health care provider considers is urgent and necessary to save your life, prevent serious damage to your health or ease significant pain or distress.

Consent is also not required for over-the-counter medications or first-aid treatments.

In all other circumstances, however, consent to treatment is required. The *Guardianship Act 1987* (NSW) divides medical and dental treatment into three groups—special, major and minor—and sets out who can give consent to treatment in these different groups.

[The 'person responsible' can consent to you having minor or major treatment, but only the Guardianship Tribunal can consent to you having treatment that is in the 'special treatment' group.](#)

To work out who is the appropriate 'person responsible', the health care provider has to check the following:

- If there is a guardian appointed with specific powers to consent to dental or medical treatment, then they are the 'person responsible'.
- If not, the 'person responsible' is your spouse or de facto partner if you have one.
- If you don't have a spouse or de facto partner, but do have a person who looks after you all the time, then they are the 'person responsible'.
- If there is no-one looking after you, then a close friend or relative is the 'person responsible'.
- If there is no 'person responsible' available, then the Guardianship Tribunal is likely to be asked to appoint a guardian to make medical decisions on your behalf.

This process does not mean you can be given treatment by force. [If you believe that you are being forced to have treatment against your will, you should immediately get legal advice.](#)

The likely outcome of you refusing treatment will be that the Guardianship Tribunal will decide the issue. This will allow you to put your views and reasons for refusing treatment to the Tribunal or have a lawyer put these arguments to the Tribunal.

There are different legal principles and processes if you are an involuntary patient under the *Mental Health Act 2007* (NSW), click [here](#) for more information.

5E.2: Consent from the Guardianship Tribunal for medical treatment

The 'person responsible' can consent to minor or major treatment, but only the Guardianship Tribunal can consent to special medical treatment. Special medical treatment refers to any treatment that:

- may result in the person becoming or being reasonably likely to become permanently infertile;
- is carried out to end a pregnancy;
- results in a vasectomy or tubal occlusion (the surgical blocking of the fallopian tubes);
- involves the use of an aversive stimulus (a harsh action that insults the senses);
- involves the use of drugs affecting the central nervous system, but only if the dosages or length of treatment are outside the accepted mode of treatment;
- involves the use of medication that reduces androgens (such as testosterone) in order to control behaviour;
- involves the administration of a drug of addiction (other than use for the treatment of cancer or palliative care for a terminally ill patient) for more than 10 out of 30 days;
- is a new medical or dental treatment that is still experimental and has not yet gained the support of a substantial number of medical and dental practitioners specialising in the field concerned; or
- is a declared special treatment under the Regulations.

The Guardianship Tribunal can also give substitute consent for medical or dental treatment if the patient lacks capacity to consent to their treatment, and there is no 'person responsible' to give consent.

In either situation, the Tribunal will hold a hearing to decide whether consent should be given for the particular treatment or whether treatment should be given to the person even if they are objecting to it. Click here to find out more about hearings in the [Guardianship Tribunal](#).

5E.3: Powers to treat under the *Mental Health Act 2007* (NSW)

There are special rules for consent to surgical treatment for physical conditions that apply to treatment of involuntary patients, correctional and forensic patients.

If it is an emergency situation, and the patient has not consented, then an authorised medical officer or the Director-General of NSW Health can consent to the operation if the patient lacks capacity to consent.

Involuntary patients who have the capacity but refuse to consent in an emergency can be treated with consent from the Director General of NSW Health or the Mental Health Review Tribunal. Correctional and forensic patients who have capacity but refuse consent in an emergency cannot be treated.

For surgery that is not urgent, the Director-General of NSW Health or the Mental Health Review Tribunal can also consent to operations on involuntary patients and forensic patients whether they have capacity to consent to the surgery or not. If you are an involuntary patient in this situation, you may be asked to consent, but if you are asked and refuse, the Director-General has the power to consent to the treatment.

If you do not have a mental illness under the *Mental Health Act 2007* (NSW), and you are a correctional patient, a forensic patient or a voluntary patient and you have capacity to consent, then you cannot be forced to have an operation. If you are in this situation but don't have capacity, the Director-General has power to consent to an operation on you.

There are additional rules for what is called 'special medical treatment' (note this is different from 'special treatment' under the *Guardianship Act 1987* (NSW)).

Special medical treatment is defined as 'any treatment, procedure, operation or examination that is intended, or is reasonably likely, to have the effect of rendering permanently infertile the person on whom it is carried out'.

Children under 16 years old cannot have special medical treatment. Adult involuntary patients can only have special medical treatment with the consent of the Mental Health Review Tribunal, which has to be satisfied:

- that the treatment is necessary to prevent serious damage to the health of the patient;
- that the treatment is the only or the most appropriate way of treating the patient; and
- that the treatment is obviously in the best interests of the patient.

If you want to refuse to have surgery, and you are an involuntary, correctional or forensic patient, it is strongly suggested that you get legal advice as early as possible. The *Mental Health Act 2007* (NSW) allows for urgent hearings of the Mental Health Review Tribunal in these circumstances, and you are likely to need some time to get together evidence before the hearing. You are unlikely to be granted legal aid for this sort of Tribunal matter. To find out more about getting legal advice, click [here](#).

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Part 5 Section F: Advance directives

This section is about advance directives in NSW and what they are. It also has a page on enduring guardians with links to further information. In this section, you will find information about:

- [What advance directives are](#)
- [How advance directives are made](#)
- [What goes in an advance directive](#)
- [Advance directives about mental health issues](#)

5F.1: What are advance directives?

Advance directives are a relatively new way that you can give guidance to health care professionals and health care providers on how you want to be treated in the future if you become unwell.

Advance directives have legal force in NSW.

An advance directive is a written document that sets out what a person wants to happen to them if they become incapable of making decisions for themselves. It usually includes information about where they do or do not wish to be cared for and by whom, or what treatment they want or do not want. An advance directive can include a person's wishes about any aspect of their life.

For example, you can include in your advance directive the name of the person you want to make sure your wishes are carried out and to make other personal decisions for you. An advance directive can also say who you would want to have as your guardian if one needs to be appointed (however, [to do this it might be better to appoint the person as an enduring guardian](#)).

To find out more about how to make an advance directive, click [here](#) to go to the next page of the Manual.

[For more about enduring guardians, click here to go to the Guardianship Tribunal website.](#)

[Or click here to go to the Office of the Public Guardian website to read about enduring guardians or to download related forms.](#)

5F.2: How are advance directives made?

There is no set way to make an advance directive. However, the following is useful to keep in mind when you are making yours:

- Make sure it is clear and easy to understand (an advance directive will not be enforced if it is vague and non-specific about what you actually want to happen if you become unwell).
- Have it witnessed by someone, preferably by someone independent who is not referred to in the document.
- Keep it in a safe place and give a copy to relatives, friends or carers and to any person who has been involved in your treatment.

Advance directives are most effective if they are made in consultation with your treating health care professionals (that is your GP, case manager and/or your psychiatrist).

If you can afford to get private legal advice about preparing your advance directive, then this should be your next step.

Your advance directive will not be valid, and can be ignored later, if you [do not have capacity](#) when you sign it. To protect against your advance directive being challenged on this basis, you should ask your GP or psychiatrist to give you a certificate saying you do have capacity at the time you sign your advance directive.

[NSW Health has prepared a guide for health care professionals about preparing advance directives, click here to read it.](#) If you are talking to a health care professional about making an advance directive, you could refer them this guide.

To find out more about getting legal advice, click [here](#).

For more about what you can include in your advance directive, click [here](#) to go to the next page of the Manual .

5F.3: What goes in an Advance Directive?

Advance directives often focus on end-of-life decision-making, for example, stating whether or not you want to be resuscitated if you lose consciousness or

stop breathing in certain circumstances.

These are the sorts of advance directives that have been considered by the courts, and the courts have ruled that they should be upheld and enforced.

There is no limit what you can put in an advance directive. This is partly because, unlike other Australian states, NSW does not have any written laws about advance directives. The courts in NSW have however held that they are enforceable in certain circumstances.

Remember, if an advance directive is in any way unclear or not specific, it is unlikely to be enforced!

If you want to include your wishes about mental health treatment and care in an advance directive, click [here](#) to go to the next page of the Manual .

5F.4: Advance Directives about mental health issues

You can include in your advance directive that you want to be treated with particular drugs and not other drugs if you become unwell.

You can include in your advance directive that you don't want to be treated (or do want to be treated) with particular procedures such as electro-convulsive therapy (ECT).

You can also put in your advance directive your wishes about life management arrangements if you are admitted to hospital with a mental illness in an acute phase. This could include, for example, details about what you want to happen about the care of your children, the care of your pets, and who in your work place can be told.

It is unlikely that the courts would allow an advance directive to overturn the choices of medication made by a hospital to treat you if you are an involuntary patient, a decision by the Mental Health Review Tribunal to order that you have ECT, or a decision by Community Services NSW or the Children's Court to place your children in care.

However, all these decisions are discretionary, and putting your wishes in an advance directive will enable these bodies to better take into account your wishes if you become so unwell that you cannot express them yourself.

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Part 5 Section G: Powers of a guardian to admit a person as a voluntary patient

If you are a person under guardianship, your guardian seek your admission to a psychiatric hospital or unit as a voluntary patient by making a request to an authorised medical officer.

As a voluntary patient, your guardian can also request that you be discharged. The hospital must discharge if requested by your guardian. However, the hospital could begin the process to make you an [involuntary patient](#) at the same time as your guardian asks for you to be discharged if they think that you need to remain in hospital.

Depending on the terms of the guardianship, your guardian may have the power to overturn your rights to refuse medication or other treatment (other than electro-convulsive therapy (ECT) and the prohibited treatments under the *Mental Health Act 2007* (NSW) [[link to 4D.4](#)] if you are an involuntary patient).

However, as a voluntary patient you cannot be kept behind locked doors and cannot be stopped from leaving the hospital.

If you do decide to leave in these circumstances, there is nothing to prevent the hospital starting the process to make you an involuntary patient if it can show that you are mentally ill under the definition in the *Mental Health Act 2007* (NSW).

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Chapter 6 - Mental Illness and the Criminal Justice System

Part 6 Section A: Overview

Most people during their lifetime, including people diagnosed with mental illness, have no or very infrequent contact with the criminal justice system (that is, the police, criminal courts, prisons and probation and parole).

A person may have contact with the criminal justice system as a person charged with having committed a crime, or as a friend or relative of someone charged with committing a crime, or as a victim of crime. People also come in contact with the police and then sometimes the criminal courts if they are a witness in a criminal case.

However, if you are a person with mental illness you are more likely than a person who does not have mental illness to come into contact with the criminal justice system. This is reflected in the over-representation of people with mental illness in NSW prisons. People who are mentally ill are often physically and emotionally vulnerable, and are therefore also more likely to be victims of crime.

Nevertheless, the majority of people with mental illness won't ever have contact with the criminal justice system. And people with mental illness are no more likely to commit crimes than people without mental illness.

People with mental illness are often stereotyped as dangerous or not to be trusted. These stereotypes should always be challenged, including through education programs for people working with mentally ill people as well as those working in the criminal justice system.

This part of the Manual is written for those people with mental illness who come into contact with some part of the criminal justice system, particularly if they are charged with having committed a crime or have been the victim of a crime.

In this part of the Manual, you can find out more about:

- [Role and powers of the police](#)
- [Criminal cases in the courts](#)
- [Fines](#)
- [Mental illness and prisons](#)
- [Victims of crime](#)

This part of the Manual is not a general guide to the criminal justice system. Rather, it provides information about the rights of people with mental illness in that system and the particular ways in which the criminal justice system deals with mental illness.

For more general information about the criminal justice system, you should visit the Legal Information Access Centre (LIAC) at a public library.

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Part 6 Section B: Role and powers of the police

6B.1: Introduction

This section includes information about:

- [The role of the NSW Police Force](#)
- [What is a crime](#)
- [Who other than the police 'police' activities](#)
- [What powers do police have 'on the street'](#)
- [What powers do police have in relation to arrest](#)
- [What to do if you are arrested](#)

6B.2: The NSW Police Force

Australia has state and territory police forces, for example, in NSW there is the NSW Police Force, and a separate national police force called the Australian Federal Police. The state and territory police deal with the state and territory criminal laws. The Australian Federal Police deal with Commonwealth criminal laws and general policing in the Australian Capital Territory.

The [NSW Police Force](#) states that its main roles are:

- [preventing, detecting and investigating crime](#);
- monitoring and promoting road safety;
- maintaining social order; and
- performing and co-ordinating emergency and rescue operations.

Other major services that the NSW Police Force provide include:

- traffic control; and
- criminal intelligence analysis.

6B.3: What is a crime?

You have committed a crime when you have done something wrong according to a criminal law and that is punishable by a court. Another term for crime is 'offence' or 'criminal offence'. A person who has committed a crime is called an 'offender'. If a person is thought to have committed a crime, they may be referred to as an 'alleged offender'.

There is a range of crimes, some are considered far more serious than others. The seriousness of a criminal offence is usually reflected in the maximum penalty that can be imposed when a person commits that offence.

Some crimes can be dealt with 'on the spot' with the issuing of an on-the-spot fine. These tend to be relatively minor crimes, such as travelling on public transport without a ticket, and some driving offences. For more about fines, click [here](#).

Other crimes can result in the person accused of the crime being arrested and held in police custody. These are usually more serious crimes and are more likely to be dealt with formally through a court hearing. For more about criminal cases in the courts, click [here](#).

6B.4: Who else polices activities

As well as the police, there are other people who have some powers similar to the police, such as CityRail and CountryLink Transit Officers, and Local Government Rangers.

CityRail Transit Officers can:

- issue infringement notices (on-the-spot fines) for railway offences such as fare evasion, smoking under cover on a railway station, and other conduct that is an offence under the [Rail Safety Act 2008 \(NSW\)](#) and the [Rail Safety \(Offences\) Regulation 2008 \(NSW\)](#);
- require people they suspect of committing a railway offence to provide their correct name and address; (unless they are 'special constables', Transit Officers don't have a general power beyond this limited situation to demand identification);
- require a person to leave a train or railway station if they are believed to have committed certain offences (including railway offences) or are causing nuisance to others;
- check passenger's tickets and concession cards;
- in certain circumstances, arrest alleged offenders and hand them over to the NSW Police; (unless they are 'special constables', Transit Offices don't have any special power of arrest beyond a citizen's arrest).

CountryLink Transit Officers have similar powers.

There are also Revenue Protection Officers who do a similar job and have similar powers on buses and ferries.

If you believe you have been wrongly fined or dealt with by any of these officers, you should first contact the authority they work for to make a complaint. You can also go to the Local Court to challenge a fine. To find out about getting advice, [click here](#).

6B.5: Police powers 'on the streets'

Sometimes people with mental illness find themselves homeless, and therefore physically vulnerable. Sometimes people with mental illness find that their behaviour or way of speaking means they become the focus of attention in public places. Both of these situations have the potential to lead to situations where the police may be called.

Police take their role in maintaining public order seriously.

People are allowed to be in public places and generally the police do not have the power to do anything unless a criminal offence has been committed or the police have a 'reasonable suspicion' that an offence will be committed.

However, recent changes to the law have given the police more powers to intervene to 'maintain public order'. An example is that members of the NSW Police Force have the power to order a person to 'move on' if they are 'noticeably' drunk.

For more information on police 'street' powers: [click here to access Legal Aid NSW's information page on police powers in NSW. 'Get Street Smart'](#), or [click here to access the Shopfront Youth Law Centre's information page about police powers and your rights](#).

For information on police powers of arrest, [click here to go to the next page of the Manual](#).

6B.6: Police powers of arrest

If the police reasonably suspect that you have committed a crime, they can arrest you. Reasonable suspicion is very different from proof beyond reasonable doubt, which is the standard of proof required when you finally go to court for the hearing of a criminal charge. If a person told the police that you did something that was a crime, unless the police have a lot of other evidence that you didn't do what that person said you did, this would be enough for the police to have a reasonable suspicion that you had committed a crime.

Criminal cases can begin either by the police arresting the alleged offender or by giving or sending the alleged offender a document ordering them to be at court at a particular time and date for the hearing of the criminal charge (this document is called a 'summons'). Cases dealing with street offences (such as 'resist arrest' or 'use offensive language'), even though they are not as serious as other offences, often begin with the person being arrested by the police.

Police have some discretion (that is, choice) about whether to arrest someone or not. This usually depends on the seriousness of the crime. Some crimes can be dealt with by the police giving a warning. Some less serious crimes, including most traffic and parking offences, are dealt with by a 'penalty' or

'infringement' notice (an 'on-the-spot fine'). [If you are given a penalty notice you can either decide to pay the amount of the fine or choose \('elect'\) to have the matter go to court.](#)

Police also have power under the *Mental Health Act 2007* (NSW) to take you, using force if necessary, to a psychiatric hospital or unit. Sometimes the police have a choice of whether to charge a person with mental illness with having committed a relatively minor crime or to take them to a psychiatric hospital.

If you find yourself in a situation where you want to go to a hospital and fear that you may be arrested instead, you should make sure the police know:

- You want to go to a hospital and are willing to be treated for a mental illness;
- Who you have had contact with in mental health services previously (if at all) including the names and contacts for any treating caseworkers and/or doctors;
- The contact details of your family and friends.

The next page gives you information on what to do and what not to do if arrested, click [here](#).

6B.6.1: What to do if you are arrested

If you are arrested, it is important:

- NOT to resist arrest
- NOT to yell, swear or be abusive
- NOT to answer any questions except to give your name and address
- NOT to say anything without legal advice
- NOT to sign any statement or document, or make any statement, without legal advice
- NOT to plead guilty (that is, say you did what you are being accused of) without legal advice
- TO ask why you are being arrested
- TO give your correct name and address
- TO ask the police for a telephone so you can contact a lawyer
- TO ask for bail.

The NSW Law Society has an advice sheet, '[Under arrest?](#)' that you might find useful.

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Part 6 Section C: Fines

You can be given a fine, which is an order to pay a penalty amount of money (usually to the government), in two main situations:

- If you go to court for having committed a crime, you could get a fine if you are convicted (found guilty of the offence).
- If you have committed a minor crime, such as a parking offence or less serious traffic offence or a railway offence, you could get an 'on-the-spot' fine in the form of an infringement or penalty notice.

If you are likely to be given a fine by a court, it is important to tell your lawyer (or the court directly if you are not represented by a lawyer) if you have little money to pay a fine, before the judge or magistrate makes their decision. The judge or magistrate might then reduce the amount of the fine or deal with you in another way such as by putting you on a good behaviour bond.

You cannot 'work off' a fine by going to prison.

If you have been given time to pay a fine by the Local Court and you cannot pay it on time, don't just leave it and do nothing. If you have a reason why you can't pay on time, you can ask for further time to pay. [Click here for further information](#).

If you are homeless, or a person with mental illness or an intellectual disability or you are facing extreme economic hardship and have been given a fine you may be able to apply for a 'Work and Development Order' to 'work off' the fine through doing voluntary work with a community organisation, attending training or education courses, or participating in a treatment program. For more about Work and Development Orders, [click here](#).

There are also other things you can do if you can't afford to pay a fine. Click [here](#) to find out more .

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Part 6 Section D: Criminal cases in the courts

6D.1: Overview of the courts, crime and mental illness

This part of the Manual provides you with information about how criminal cases are dealt with in the courts. It has separate sections on:

- [The criminal courts](#)
- [Crime and mental illness](#)
- [The Local Court including how to behave in court](#), [criminal cases in the Local Courts](#), [information about if you are mentally ill and facing criminal charges in the Local Court](#), [Section 32 orders](#), [Section 33 orders](#)
- [Getting legal advice and representation](#)

6D.1.1: The criminal courts

There are a number of different courts that deal with criminal cases. Less serious crimes are dealt with by the [Local Courts](#). More serious crimes are dealt with by the higher courts: the District Court and the Supreme Court. The Supreme Court deals with the most serious crimes.

If you are facing criminal charges in the District or Supreme Court, and you plead not guilty, there would normally be a jury as well as a judge.

Decisions by the Local Court in criminal cases can be appealed to the District Court. Similarly, decisions of the District Court can be appealed to the Supreme Court and then to the Court of Criminal Appeal.

6D.1.2: Crime and mental illness

You are said to have committed a crime when you have done something that is prohibited by criminal law and is, if proven against you, punishable by a court. In general, to be found guilty ('convicted') of a crime you must have acted deliberately ('with intention').

If a mental illness prevents you from having that intention, you cannot be found guilty of the crime. If you do not even understand what the crime is and are therefore not able to either plead guilty or not guilty to the allegation that you committed the crime (or not able to understand enough to talk to a lawyer about it), then you are said to be 'not fit to be tried'.

In these circumstances, you may not be allowed to go straight back to the community. Instead, you may have to spend a considerable time in a NSW prison or be forcibly held in hospital, sometimes for a longer time than if you were convicted and punished for the crime.

[Click here to find out about your rights](#), and the processes that apply in NSW if you are found either **not guilty** of a serious offence dealt with in the District or Supreme Courts **because of mental illness** or if you are found to be **unfit to be tried** of an offence in the same courts.

In NSW, if you are found not guilty of an offence because of mental illness or you are found not fit to be tried, you become a **forensic patient**.

The next page on [Local Courts](#) gives you general information about the Local Courts and then about how the Local Courts deal with people who have been charged with less serious crimes and who have been diagnosed with a [mental illness or a mental disorder](#).

6D.2: Local Courts

Local Courts, sometimes still called Magistrates' Courts, deal with the less serious crimes, including traffic offences, and with the first stage of trials of more serious crimes.

Local Courts also deal with cases other than criminal cases. They deal, for example, with Apprehended Violence Orders, and some civil law matters, such as small debt claims.

Although Local Courts deal with less serious crimes, they are still very formal compared to tribunals such as the Mental Health Review Tribunal.

Each Local Court is controlled by a magistrate who is the judge in the Local Court. [There are formalities about being in Local Court that you can read about on the next page](#).

6D.2.1: Court etiquette: behaviour in court

When you are in court, you should call the magistrate 'Your Honour'.

The magistrate and other court officers, such as the prosecutor, are likely to call you by your formal title and family name, for example, 'Mr Jones' or 'Mrs Palaos' or 'Ms Ng'.

It is also usual for everyone to stand when the magistrate comes into the courtroom and when he or she leaves the courtroom. This is to show respect for the institution of the court. You will also be expected (and asked) to stand if the magistrate speaks directly to you in the court.

If you have never been to court before, try to go along to your Local Court before your case is being dealt with so you can see what goes on. [For a list of where the Local Courts are, click here](#).

The next page has more about how the Local Courts deal with criminal cases, click [here](#) to go to the next page.

6D.2.2: Criminal cases in the Local Courts

Local Courts deal with criminal cases in two ways, depending on the seriousness of the crime.

If you are alleged to have committed a serious crime that will, if you plead not guilty, have to be dealt with by a judge in the District or Supreme Court, and a jury, you will first be taken to a Local Court to be formally charged. The Local Court magistrate may also have to decide whether you should be given bail (released back into the community usually on certain conditions) or have to stay in custody. You may have to go back to the Local Court and appear before the magistrate several times even if you plead not guilty before your case gets sent to the Supreme Court or District Court where a different judge will deal with it.

If the crime is less serious, all of the court hearings will take place in the Local Court until you are found not guilty, or are found guilty and sentenced. There are no juries in criminal hearings in the Local Court.

Sometimes, depending on the crime you are charged with, you can decide whether to have the case dealt with by the Local Court or have it sent to a higher court for trial with a jury if you plead not guilty, or (if you decide to plead guilty) for a hearing by a single judge on what penalty ('sentence') will be given to you.

The Local Court can take it into account if you have a mental illness and are facing criminal charges. To find out more, go to the [next page of the Manual](#).

6D.2.3: If you are mentally ill and facing criminal charges in the Local Court

Mental illness is dealt with in a different way in the Local Court from the Supreme and District Courts.

The higher courts can decide that you are 'not guilty due to mental illness' or are 'not fit to plead' and [particular processes flow from these decisions](#).

With criminal cases in the Local Court, there is no process for dealing with a person who is 'not fit to plead'. If a person is 'not fit to plead' in a Local Court, other than dealing with them under [section 32](#) or [section 33](#) of the [Mental Health \(Forensic Provisions\) Act 1990 \(NSW\)](#), the magistrate has to let them go.

You can plead not guilty because of mental illness in the Local Courts in NSW, but it is extremely rare for a magistrate to decide that a person is not guilty because of mental illness. If a magistrate decided that a person is not guilty because of mental illness the outcome would be the same as any other 'not guilty' finding: the criminal charge would be dismissed and the person would be free to leave the court without a criminal conviction or penalty.

The usual way magistrates in the Local Court deal with people with mental illness who are charged with criminal offences is by making a [Section 32 Order](#) or a [Section 33 Order](#). (This refers to sections 32 and 33 of the [Mental Health \(Forensic Provisions\) Act 1990 \(NSW\)](#).)

If you are in the Local Court facing a criminal charge and you want the magistrate to deal with your case by getting you treated for your mental illness, your lawyer should make a section 32 application. Section 32 allows a magistrate to let you go on condition that you attend a specified place for treatment or you agree to go into the care of a particular person. If you agree to the condition, no conviction is recorded. The magistrate makes this sort of order after he or she is given a treatment plan that has been designed for you by a suitably qualified person, who is usually a health care professional. Under section 32, the magistrate can also let you go with no conditions. For more about Section 32 Orders, click [here](#).

Section 33 only applies if you are found to be mentally ill under the definition in the [Mental Health Act 2007 \(NSW\)](#). The consequences of a Section 33 Order are that you are referred to a psychiatric unit or hospital for further assessment. After that assessment, you can become an involuntary patient or be returned to the Local Court if you are not mentally ill under the [Mental Health Act 2007 \(NSW\)](#). For more about Section 33 Orders, click [here](#).

If the magistrate does not deal with you under section 32 or section 33, you can still give the magistrate the details of your mental illness as part of what is called a 'plea in mitigation' (that is, the things you want the magistrate to consider before you are sentenced). This can include reports from health care professionals and community mental health services. This sort of information might also be included in a pre-sentence report (usually prepared by the Probation and Parole Service), which is sometimes requested by the magistrate before you are sentenced.

6D.2.4: Section 32 orders

You should try to have a lawyer to represent you if you want to make an application for a Section 32 Order. For information about how to find an appropriate lawyer, click [here](#).

One of the reasons for this is that you must have a treatment plan before a magistrate will make an order under Section 32. The lawyer is not the person who prepares this plan, but he or she is the best person to arrange for the plan (if you don't already have one) to be prepared and to make sure that you are at court when you have to be.

A treatment plan could include the following information about you:

- Your background, personal situation, including information about your childhood, education and/or training, housing history, relationships with other people, employment history and any history of drug and/or alcohol use.
- Your medical history including any diagnoses of mental illness.
- Results of psychometric testing of you.
- DSM-IV Global Assessment of Functioning Score and diagnoses.
- Your prognosis, that is, the expected outcomes from your treatment as set out in the plan.
- Resources needed to treat and support you according to the plan, including who will provide the treatment and support and who will pay for it.
- How suitable you are for a treatment plan.
- How motivated you are to have the treatment set out in the plan.
- How you will be able to comply with the plan.
- Who will be responsible for putting the plan into effect.
- What would be a major reportable breach of the plan.
- What will happen if you breach (fail to follow through with) the plan.
- Information about what sort of ongoing treatment is planned once the Section 32 Order ends.
- Your consent to the plan.
- Your version of what happened that led to you being charged with the criminal offence.

If the magistrate is satisfied that the treatment plan is appropriate, and that you understand the plan, and are willing to keep to the plan, he or she will discharge you (let you go) on condition that you keep to the plan.

If you don't keep to the plan, this will be treated as a breach of the Section 32 Order and you can be brought back to court and be dealt with for the original criminal offence you were charged with. If this happens, it will be very difficult for you or your lawyer to convince the magistrate to continue the Section 32 Order. If the magistrate won't let the Section 32 Order continue, he or she will then hold a hearing into the criminal charge and, if you are found guilty, you could then be fined, put on a bond or sent to prison to serve a period of time in prison for the offence.

6D.2.5: Section 33 orders

Section 33 is different to section 32 because the magistrate must have evidence that you are 'mentally ill' under the definition found in the [Mental Health Act 2007 \(NSW\)](#).

If you are charged with an offence that can be dealt with in the Local Court, and the magistrate decides to deal with you under section 33, usually he or she will order you to be taken to a local psychiatric unit or hospital for assessment under the *Mental Health Act 2007* (NSW). This is not a voluntary process and you can be taken for the assessment even if you don't want to go.

The other option is for the magistrate to make a Community Treatment Order. For more about Community Treatment Orders, click [here](#).

A third option is for the magistrate to discharge you (let you go) into the care of a responsible person, usually with conditions. This doesn't happen very often, and won't happen unless there is strong medical and other evidence presented to the magistrate supporting this.

When a hospital assesses you under a Section 33 Order from a magistrate, it is exactly the same as any other initial assessment under the *Mental Health Act 2007* (NSW) and your [rights and obligations are exactly the same](#).

If at least two doctors decide that you are not mentally ill under the *Mental Health Act 2007* (NSW), then you will be sent back to the Local Court and again have to appear before a magistrate.

That magistrate will then deal the criminal charge. The magistrate can do one of two things:

- Make an order under [section 32](#), but this requires a treatment plan, and you would need the magistrate to delay the hearing to have that prepared unless you already have one.
- Start the hearing by asking whether you are guilty or not guilty to the criminal charge.

If you are in custody, the [Justice Health Court Liaison Service](#), found at the larger Local Courts, can help you to get the information you need to give to the magistrate to convince him or her to make a Section 33 Order.

6D.3: Legal advice and representation

You should get legal advice before you plead guilty or not guilty to a criminal charge in the Local Court or make any other decision when you have been charged with a criminal offence.

The magistrate will usually agree to at least one adjournment (delay in the hearing) to give you time to get legal advice before he or she requires you to indicate whether you are pleading guilty or not guilty.

Legal help (both advice and some representation) is available for criminal matters from [Legal Aid NSW](#). Legal Aid NSW has Duty Solicitors in Local Courts.

If you are Aboriginal or Torres Strait Islander you can also contact the [Aboriginal Legal Service NSW/ACT](#) (ALS).

Legal Aid NSW and the Aboriginal Legal Service generally provide free advice and representation, subject to their guidelines. Legal Aid NSW often asks for an amount of money as a contribution to the cost of the legal services but this will depend on your financial and other circumstances.

If you can afford to, you can also choose to pay for legal advice and representation through a private lawyer. There are lawyers who specialise in criminal law. You can [contact the Law Society of NSW](#) to find one in your local area.

Some [Community Legal Centres](#) have lawyers who represent people (for free) in criminal cases, and most provide free legal advice (usually on particular days of the week).

[LawAccess](#) gives limited, over-the-phone advice on all legal problems and can also refer you to a lawyer. This is also a free service.

If you are homeless or at risk of being homeless, and are facing a criminal charge in a Local Court in Sydney or its suburbs, you can contact the [Homeless Persons' Legal Service](#) for free legal advice and representation.

It is strongly advised that you get an experienced criminal lawyer if you want to make an application under section 32 or section 33, even if you do have help from your usual treatment team or the Court Liaison Service. If you are in custody, [Legal Aid NSW](#) will usually provide free representation.

You should ask your lawyer about diversionary options.

Legal Aid NSW also runs the [Prisoners Legal Service](#).

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Part 6 Section E : Mental Illness and prisons

If you are a prisoner you should expect the same standard of health care as people who are not prisoners.

In reality, while the standard of health care NSW prisoners receive varies in line with other public health services in NSW, the access to health care is often limited because it is delivered in a prison setting.

Prisoners, unlike others in the community, cannot access a general medical practitioner (GP) of their choice and cannot access public or private health services in the community.

This section of the Manual has information about:

- [Access to health care in prisons](#)
- [Access to mental health services in prisons](#)
- [Complaints by prisoners about the health care they receive](#) and [whether to contact the Health Care Complaints Commission or the NSW Ombudsman](#) and/or the [Official Visitor](#)
- [Urine testing and other drug testing](#)

6E.1: Access to health care in NSW prisons

When you are in prison, you have a right to get health care, dental treatment and mental health care. Each prison has a clinic staffed by a registered nurse who works for Justice Health, which is part of NSW Health. The clinic is open each day and the nurse should be able to help you with most health problems, give you your medication and, when needed, refer you to other health care professionals such as the doctor, dentist, or optometrist. You can also be referred to medical specialists but this referral has to be done by a visiting GP.

Justice Health is the only provider of health care in NSW prisons (except at Junee Correctional Centre). Justice Health contracts out the provision of some health services (mainly to GPs visiting prisons).

Medicare doesn't pay for health services for prisoners.

Justice Health and Corrective Services NSW do not stop outside health professionals visiting prisoners. However, there is no obligation on Justice Health to change treatment and/or medication, even if a doctor from outside the prison medical system disagrees with the treatment you are receiving in prison.

Also it is likely to be difficult to persuade a health care professional, particularly if they haven't seen the person before, to see a prisoner. With no Medicare available, the prisoner wanting the visit or the person arranging the visit will usually have to pay the full fee for such a visit.

Usually access to the visiting GP is 'triaged'. That means the prisoners that the nurses assess as having the most urgent and serious health problems will see the doctor first. This can often mean long delays in seeing the doctor if you have a less urgent problem. Therefore, if your condition worsens, you should tell the clinic as soon as possible.

6E.1.1: Mental health care in NSW prisons

Many, but not all Justice Health clinics, have a mental health nurse at the clinic. Psychiatrists also visit the clinics. You will be expected to talk to a Mental Health Nurse, if available, before you see a psychiatrist.

6E.1.2: Dental treatment in NSW prisons

If you have problems with your teeth, call the Oral Health Hotline on the Common Auto Dial List 04#. This line is very busy so you may have to keep trying. An appointment with a dentist will be arranged but you may have to wait depending on the seriousness of your problem.

6E.2: Complaints about health care in NSW prisons

If you are a prisoner in NSW, any complaints you have about the standard and quality of health care provided to you should be made either to:

- [Justice Health](#) ; or
- the [Health Care Complaints Commission \(HCCC\)](#) .

If your complaint is about access to health care you could complain directly to:

- [Justice Health](#) ; or
- the [NSW Ombudsman](#) .

For more about how to make a complaint, [click here](#) . To find out which body it is best to complain to, [click here](#) .

Complaints about conditions and treatment in prison can also be made to an Official Visitor. For more about the Official Visitor, [click here](#) .

6E.2.1: How to make a complaint about your health care if you are in a NSW prison

The first thing to do if you are unhappy about your health care in prison is to ask to speak to the nurse in charge of the clinic at the prison.

If you still aren't happy then you could write a letter outlining your concerns to:

Chief Executive

Justice Health
PO Box 150
MATRAVILLE NSW 2036

Formal complaints can take a long time to be resolved. You could try talking to an [Inquiry Officer at the Health Care Complaints Commission \(HCCC\)](#) by dialling 05# on the Common Auto Dial List. Sometimes Inquiry Officers at the HCCC can contact Justice Health and help to sort things out more quickly.

If you still aren't satisfied, then you can complain to the [Health Care Complaints Commission \(HCCC\)](#). Your complaint must be in writing, so you can either use the HCCC complaints form, or write a letter to the Health Care Complaints Commission.

Health Care Complaints Commission
Locked Mail Bag 18
STRAWBERRY HILLS NSW 2012

If you need help with writing down the complaint, contact an [HCCC Inquiry Officer by dialling 05# on the Common Auto Dial List](#). The Inquiry Officer can write a letter of complaint for you to sign if there is some reason that you can't write it on your own.

If your complaint is about the treatment and care received from a visiting GP or psychiatrist, including about diagnosis or medication prescribed, you should make it clear your complaint is about this. Visiting doctors and staff psychiatrists are likely to talk to Justice Health staff about your medical history. However, decisions about whether you are referred to a specialist or prescribed a particular medication are ultimately decisions made by the doctor, not the nursing staff employed by Justice Health. Justice Health nurses cannot prescribe medication.

If you are having trouble getting to see medical staff, or you think it has been too long for you to get an appointment with a specialist doctor, [the NSW Ombudsman's office](#) might be able to help. (But remember, if your complaint is about the quality of care, or the actual medical treatment you have received, the Ombudsman won't usually get involved.) You can call the NSW Ombudsman on the Common Auto Dial List 08#.

You can also write to the NSW Ombudsman's office, just telling them your story in your own words. The address is:

NSW Ombudsman
Level 24, 580 George Street
SYDNEY NSW 2000

If you are not sure whether to contact the HCCC or the Ombudsman, click [here](#) to find out more.

6E.2.2: Should you contact the Health Care Complaints Commission or the Ombudsman

The Health Care Complaints Commission (HCCC) cannot deal with complaints about general prison issues. It can deal with complaints about health care services provided to prisoners. For example, complaints about the quality of food provided, or concerns about hygiene issues around the preparation of food should be made to an [Official Visitor](#) or the [NSW Ombudsman](#). Sometimes prisoners can't get their medications on time because of lockdowns. Complaints about this happening should be made to the [NSW Ombudsman](#).

The NSW Ombudsman also deals with complaints about access to health services as opposed to the standard and quality of treatment and care.

If you are a patient at the Forensic Hospital at Long Bay, you should note that this Hospital is totally controlled by Justice Health and not Corrective Services NSW. If you have a complaint about the standard of health care at the Forensic Hospital at Long Bay, the HCCC can deal with your complaint. If you have a complaint about other matters not to do with the health care or treatment you receive, then the Ombudsman is the best place to complain.

If you are mistreated by a health professional (either physically, emotionally or through unwanted sexual conduct), then you should complain to the HCCC.

6E.3: The Official Visitor

If you have concerns about conditions or how you are treated in prison, you can ask to see an Official Visitor. An Official Visitor will usually visit your prison at least once a fortnight. The Official Visitors are appointed by the Minister for Corrective Services but are independent of Corrective Services NSW. They will try to fix your problem by speaking with senior prison staff.

There is a [separate Official Visitors Scheme for NSW psychiatric hospitals and units](#). This scheme visits the Forensic Hospital at Long Bay and other hospitals that house forensic patients such as Morisset and Cumberland Hospitals.

6E.4: Urine testing and other drug testing

If you are a [forensic patient](#) and you are [granted leave](#), the Mental Health Review Tribunal can set conditions on your leave about the use or non-use of alcohol and other drugs, and can order drug testing and other medical tests to check that you have obeyed the conditions. This usually means you will have to have urine tests after periods of leave as well as having tests while in prison or hospital.

If you are a NSW prisoner serving a sentence or are on remand, you can be required to have a breathalyser test or a urine test if a prison officer has a reasonable suspicion that you have used drugs or alcohol in prison.

A prison officer above the rank of Assistant Superintendent can require a prisoner to have a urine test at any time. That is, they don't need to have a 'reasonable suspicion' to make you have a urine test.

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Part 6 Section F : Victims of Crime

Anyone can be a victim of crime. By definition, a victim of crime is anyone who suffers physical or emotional harm, or loss or damage to property as a direct result of a criminal offence.

If someone committed a crime against you, you should report it to the police as soon as possible. You can do this by dialling '000' or by going to a police station.

In this section of the Manual, you can find out about:

- [The NSW Charter of Victims Rights](#)
- [Apprehended Violence Orders](#)
- [Protection orders for people under 16](#)
- [Victims' compensation](#) and the [limits on the availability of victims' compensation](#)
- [Victim support services in NSW](#)
- [Access to counselling](#)
- [Getting legal help as a victim](#)

6F.1: Charter of Victims Rights

In NSW, there is a Charter to protect and promote the rights of people who are victims of crime. The Charter is set out in the [Victims Rights Act 1996 \(NSW\)](#) and is overseen by the Victims of Crime Bureau. The Charter provides the guiding principles on how victims of crime should be treated by government agencies: with respect, courtesy and compassion at all times, and by having their needs as victims recognised and met during service delivery.

The *Charter of Victims Rights* sets out the rights of victims of crime to:

- be treated with respect, courtesy and compassion;
- be given information about services that may be able to help, and given access to these services when needed;
- be given information about the investigation and any legal proceedings in relation to the crime;
- be protected from the offender; and
- have their privacy protected.

[Click here to read the full Charter of Victims Rights](#)

6F.2: Apprehended Violence Orders (AVOs)

If you are a victim of violence and you require protection from the perpetrator of the violence (the person who was violent to you), you can apply for an Apprehended Violence Order (AVO) against that person.

An AVO is an order made by a court to protect a person by ordering the perpetrator of the violence (also called the defendant) to not do certain things. The AVO takes effect as soon as the defendant is told of the order (either when the defendant is present in court when the order is made or the defendant is told of it by the police).

There are two types of AVOs:

- [Apprehended Domestic Violence Orders \(ADVOs\)](#) ; and
- [Apprehended Personal Violence Orders \(APVOs\)](#).

An AVO—including ADVO and APVO—does not result in the defendant having a criminal record, but it is a crime for the defendant to disobey the order. If you are the victim and you know the defendant has disobeyed the order, you should call the police immediately. For more information about AVOs and how to apply, [click here to go to the NSW Justice & Attorney General's Local Courts in NSW website](#).

6F.2.1: Apprehended Domestic Violence Orders (ADVOs)

An Apprehended Domestic Violence Order is used when there is a domestic relationship between the victim and the defendant.

In certain circumstances of domestic violence, police must apply for an ADVO on the victim's behalf.

Legal aid is available to the victim, and in special circumstances, to the defendant as well.

Please note see new rules under the *The Residential Tenancies Act 2010* (NSW) recognises the existence of co-tenants. Where the fixed term of the residency agreement has expired, a co-tenant may cease to be a co-tenant by giving the landlord and other co-tenants a written termination notice of at least 21 days and vacating the premises in accordance with that notice.

[Click here to read more about this.](#)

6F.2.2: Apprehended Personal Violence Orders (APVOs)

An Apprehended Personal Violence Order is used when there is no domestic relationship between the victim and the defendant, for example if the victim

and defendant are neighbours or work colleagues.

Legal aid is not available for either the victim or the defendant. Some community legal centres may provide free legal assistance.

If someone other than the police makes the application for an APVO, the magistrate can refuse to deal with it.

6F.2.3: Protection Order for victim under 16

If you are under 16 and in need of protection from someone who is abusing you, you must contact the police so they can apply for an Apprehended Violence Order (AVO) on your behalf.

If you are under 16 and the police suspect that you are being abused or are likely to be abused, they must apply for an AVO on your behalf. This must happen even if you have not contacted the police about the abuse.

For more information about different types of AVOs, [click here to go to the Lawlink webpage on AVOs](#).

6F.3: Victims' Compensation

If you were injured by an act of violence in NSW (you do not need to live in NSW) you may have a right to compensation and/or reimbursement for medical and other expenses related to the injury.

Under the [Victim Support and Rehabilitation Act 1996 \(NSW\)](#) there are three categories of 'victims' who can get compensation:

- [Primary victims](#)
- [Secondary victims](#)
- [Family victims](#)

The Schedule of Injuries in the Act lists injuries for which compensation can be paid and the amounts payable for each injury. [Click here to view the Schedule of Injuries](#).

An act of violence includes crimes such as assault, domestic violence, robbery or sexual assault.

For how to make a claim for victims' compensation, click [here](#).

6F.3.1: Primary victim

You are a primary victim if:

- you were injured as a result of an act of violence against you; or
- you were injured while trying to prevent someone from committing that act of violence, or you were trying to help the victim of an act of violence, or you were trying to arrest the person who is committing or has just committed the violence.

For how to make a claim for victims' compensation, click [here](#).

6F.3.2: Secondary victim

You are a secondary victim if:

- you witnessed an act of violence that resulted in the victim being injured or dying and you were injured by witnessing the act of violence (this may be a psychological or psychiatric injury); or
- you are the parent or guardian of the primary victim and you were affected by becoming aware of the act of violence committed. The primary victim must be under 18 years old when the violence happened, and you must not be the person who injured them.

For how to make a claim for victims' compensation, click [here](#).

6F.3.3: Family victim

You are a family victim if you are a member of the immediate family of a primary victim when the act of violence was committed, and the primary victim died as a direct result of that act of violence.

For how to make a claim for victims' compensation, click [here](#).

6F.3.4: Making a claim for victims' compensation

An application for compensation must be made within two years of the act of violence. If the application is made more than two years after the violence, an explanation for the delay must be given with the application. Permission for late applications is usually given in cases of sexual assault, domestic violence or child abuse.

For more information about who is eligible for compensation and how to apply, [click here to go to the Victims Services' webpage on Victims Compensation](#). Follow the links on the Victim Services' website to learn more about the application and decision-making process for victims' compensation.

To find out more about how compensations are calculated and what kind of related expenses are covered, [click here to go to the Victims Compensation webpage on Calculate your Compensation](#).

For information about limits on victims' compensation and how to appeal against a decision, [click here](#).

6F.3.5: Limits on the availability of victims' compensation

Victims' compensation is not available:

- if the injuries were caused by a motor vehicle;
- if compensation for the injuries can be claimed through private insurance, such as workers' compensation;
- if the injuries occurred in prison and the victim is a convicted prisoner, unless the victim is in prison because of a failure to pay a fine, or if the Victims Compensation Tribunal considers that there are special circumstances;
- if the person was injured while they were committing a criminal offence.

If you are not happy with a decision about victims' compensation that affects you, you can appeal to the Victims Compensation Tribunal.

6F.4: Approved Counselling scheme

Counselling is recognised in the *Victim Support and Rehabilitation Act 1996* (NSW) as an important way to support victims of crime. Free face-to-face counselling may be available:

- if you are a primary, secondary or family victim: you may be eligible even if you have been awarded compensation, or you are entitled to workers' compensation;
- even if your injuries from the act of violence were not considered 'compensable injuries';
- if you are a family member of the primary victim who died as a result of the act of violence, but you're not an 'immediate' family member. For example, you're the primary victim's cousin. (This applies **unless** if the person who died was an offender, or was a convicted prisoner. Family members of someone who died as a result of a motor vehicle accident are not eligible unless the driver at fault has been charged with manslaughter or murder, or the death occurred in the commission of either of these offences).

The Victim Services website has information about the Approved Counselling Scheme with information on how to apply and application forms. [Click here to visit the Victim Services' webpage on the Scheme.](#)

6F.5: Legal help with victims' compensation claims

If you are applying for approved counselling or victim's compensation, you can do it yourself or through a lawyer.

A lawyer can also represent you if you need help in relation to an Apprehended Violence Order.

To find out about getting legal help, click [here](#).

6F.6: Victims Support Services in NSW

Victims Services provides a 24-Hours Victim Support Line:

Phone: (02) 8688 5511 (Sydney)

Freecall*: 1800 633 063

[Or click here for more information about how to contact the Victim Support Line.](#)

The Victims Services website has a lot of useful information, including information about:

- counselling and support services in NSW;
- the justice process, from how to report a crime, to how to get ready for going to court, to how to deal with the media as a victim of crime;
- victims' compensation; and more.

[Click here to go to the Victims Services' website.](#)

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

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Chapter 7 - Rights in the Community

Part 7 Section A: Overview

This part of the Manual deals with rights that everybody in the community has, but that sometimes have specific application to people with mental illness.

You will find information in this part of the Manual about:

- [The right to equality and the about anti-discrimination laws in Australia](#)
- [The right to equal opportunity and non-discrimination in employment and the services available to help people with disability, including mental illness, to find employment and be supported in employment](#)
- [The right to access education and training and how to get support with education](#)
- [The right to housing and shelter and how to access advice and assistance about different types of housing](#)
- [Social security \(Centrelink\) rights](#)
- [Rights in relation to children in your care, as well as other aspects of family law such as divorce and property settlements](#)
- [What to do when you have to pay a fine](#)

Disclaimer

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Part 7 Section B: The right to equality

This section of the Manual deals with your right to equality and to not be discriminated against because of your mental illness.

This material deals with your right not to be discriminated against because of disability (including mental illness). You also have a right not to be discriminated against because of a number of other personal characteristics, including:

- your gender, ie, whether you are a man or a woman;
- your marital status, ie, whether or not you are married;
- your sexual preference;
- your racial background;
- your age;
- your responsibility for dependants.

You can find out more about these other types of discrimination from the [Australian Human Rights Commission by clicking here](#), and, in NSW, from the [Anti-Discrimination Board by clicking here](#).

In this section of the Manual, you can read about:

- [Anti-discrimination laws generally](#)
- [What is a disability for the purpose of anti-discrimination law?](#)
- [What laws exist to protect against disability discrimination?](#)
- [What aspects of day-to-day life are covered by disability discrimination laws?](#)
- [Getting advice and assistance with disability discrimination problems](#)

7B.1: Laws against discrimination because of mental illness

Australia and NSW have a range of laws that protect people from being discriminated against because of mental illness (among other things). These are usually called anti-discrimination laws. Anti-discrimination laws across Australia deal with mental illness as a disability. [The term disability is defined in all anti-discrimination laws in similar terms](#).

The two laws that are most relevant to people with mental illness in NSW are:

- [The Anti-Discrimination Act 1977 \(NSW\)](#)
- [The Disability Discrimination Act 1992 \(Cth\)](#)

There are similar laws in each state and territory, some are called anti-discrimination laws, others are called [equal opportunity laws](#).

[These laws make it unlawful to discriminate against a person because they have a mental illness in a range of areas of life](#).

Both of these laws (and other laws prohibiting discrimination on the basis of disability) deal with two main forms of discrimination:

Direct discrimination, which is when you are treated worse than other people because of your mental illness. An example of direct discrimination would be if you were refused enrolment in an education course because you have a mental illness, or are refused insurance cover because of a history of mental illness.

Indirect discrimination, which is when there is a rule, term or condition that is applied generally but which has the effect of excluding a person with a mental illness because of their illness. An example of indirect discrimination would be if an accommodation service had a rule that all residents have to have vacated their room by 8:00am each morning and you have serious difficulty doing this because you are on medication that makes it difficult for you to get up early enough in the morning.

[It is also unlawful discrimination to fail to make a reasonable adjustment for a person with a disability.](#)

7B.1.1: Anti-Discrimination Act 1977 (NSW)

The *Anti-Discrimination Act 1977* is a NSW law that applies to things that happen in NSW, whether or not you are from NSW. It sets out what is unlawful discrimination, who is protected against discrimination, the process for asserting your rights under the Act and what outcomes you can get from the legal process.

The [Anti-Discrimination Board of NSW](#) is responsible for dealing with complaints of discrimination under the *Anti-Discrimination Act 1977* (NSW).

The Administrative Decisions Tribunal deals with complaints of discrimination that can't be resolved through the Anti-Discrimination Board's conciliation process.

[For information about the process for making a complaint under the *Anti-Discrimination Act 1977* and what happens with these complaints, click here.](#)

7B.1.2: Disability Discrimination Act 1992 (Cth)

The *Disability Discrimination Act 1992* is an Australian federal (or commonwealth) law that applies to things that happen anywhere in Australia, whether or not you are from Australia. It sets out what is unlawful discrimination, who is protected against discrimination, the process for asserting your rights under the Act and what outcomes you can get from the legal process.

The [Australian Human Rights Commission](#) is responsible for dealing with complaints of discrimination under the *Disability Discrimination Act 1992* (Cth).

The Federal Court or Federal Magistrates Court deal with complaints of discrimination that can't be resolved through the Australian Human Rights Commission's conciliation process.

[For information about the process for making a complaint under the *Disability Discrimination Act 1992* \(Cth\) and what happens with these complaints, click here.](#)

7B.1.3: Discrimination laws in other states and territories

For more information about your rights under the anti-discrimination laws of other states and territories, check the following links:

[Australian Capital Territory](#)
[Northern Territory](#)
[Queensland](#)
[South Australia](#)
[Tasmania](#)
[Victoria](#)
[Western Australia](#)

7B.1.4: What is a 'disability' under anti-discrimination law?

Disability is defined in section 4 of the *Disability Discrimination Act 1992* (Cth) and in section 4 of the *Anti-Discrimination Act 1977* (NSW). The definition in both Acts is very similar. This is the definition in the *Anti-Discrimination Act 1977* (NSW):

disability means:

- (a) total or partial loss of a person's bodily or mental functions or of a part of a person's body, or
- (b) the presence in a person's body of organisms causing or capable of causing disease or illness, or
- (c) the malfunction, malformation or disfigurement of a part of a person's body, or
- (d) a disorder or malfunction that results in a person learning differently from a person without the disorder or malfunction, or
- (e) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgement or that results in disturbed behaviour.

This definition includes mental illnesses under (e).

These laws also say that you don't have to have the disability at the time of the discrimination for the way you are treated to be unlawful. So, the laws says that the disability can be one that:

- 'presently exists';
- 'previously existed but no longer exists': for example you may have had an episode of mental illness several years ago, but have been well ever since;
- 'may exist in the future': for example, an insurance company might decide that you are likely to develop a condition based on your previous medical history or the medical history of your parents;
- 'is imputed to a person': for example, an employer might believe you have a mental illness because of the way you responded to a particularly stressful situation even though you don't have that illness.

The point of discrimination law is to stop you being treated worse or being excluded from opportunities because you have a disability or someone believes you have a disability.

[For more about who is protected against discrimination under the *Disability Discrimination Act 1992 \(Cth\)*, click here.](#)

7B.2: Areas covered in anti-discrimination law

Discrimination is against the law if it happens in any of the following 'areas of life' (click on the link for more information):

- [employment and work](#)
- [education](#)
- [disability rights](#)
- [access to public places](#)
- [providing goods or services, including health care services](#)
- [providing housing or accommodation](#)
- [the sale, lease or disposal of land](#)
- [membership of clubs and associations and the treatment of members](#)
- [sport, including playing sport as well as coaching and sports administration](#)
- [the administration of Commonwealth laws and programs](#)

[For examples of what these different areas of life might include, click here.](#)

Under anti-discrimination laws, you can also make a complaint that another person has harassed you.

[Click here to find information about harassment complaints under NSW anti-discrimination law.](#)

7B.3: Getting legal advice and help

If you think you have been discriminated against because of disability (including mental illness), you should get legal advice. You can get free legal advice about discrimination law from:

- [Community Legal Centres](#)
- [Legal Aid NSW](#)
- [LawAccess](#)

There is a specialist Community Legal Centre that deals with disability discrimination law in NSW: the NSW Disability Discrimination Legal Centre. For more about this Centre, click [here](#).

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Part 7 Section C: Employment and work

This section of the Manual deals with your rights in relation to work. You can find out more about:

- [Discrimination in employment](#)
- [Employment and support services for people with mental illness](#)

7C.1: Discrimination in employment

The following pages are about employment and rights. In this part of the Manual, you can find out more about:

- [What is unlawful discrimination in employment on the basis of mental illness](#)
- [What are 'inherent requirements' of a job](#)
- [What obligations employers have to avoid discrimination](#)
- [What questions employers can and can't ask](#)
- [Complaining about employment discrimination](#)

[You can also find out more about your rights to be free from discrimination in relation to work on the Australian Human Rights Commission's website by clicking here](#), or at [Fair Work Online by clicking here](#). This material deals with your right not to be discriminated against because of disability. You also have the right not to be discriminated against (including) in employment on the basis of a number of other personal characteristics, including:

- your gender, ie, whether you are a man or a woman;
- your marital status, ie, whether or not you are married;
- your sexual preference;
- your racial background;
- your age;
- your responsibility for dependants.

You can find out more about these other types of discrimination from the [Australian Human Rights Commission](#), and, in NSW, from the [Anti-Discrimination Board](#).

7C.1.1: What is unlawful discrimination in employment?

There is a range of things that might happen to you in relation to working or looking for work that may be unlawful discrimination. There are also things that might happen that may be discrimination, but not unlawful discrimination. For action to be unlawful discrimination, it needs to be more than simply unfair. It must relate somehow to the fact that you have a disability and that the person discriminating doesn't have a lawful excuse or 'defence'.

These actions are unlawful because there are laws that prohibit them. There are three main laws that protect workers in NSW against employment discrimination:

- The *Disability Discrimination Act 1992* (Cth);
- The *Anti-Discrimination Act 1997* (NSW);
- The *Fair Work Act 2009* (Cth).

In general terms, the following are all **discrimination**:

- You are treated worse in any aspect of employment than another person who doesn't have the same disability would have been treated. For example, you are not allowed to go to a training program that other staff members who are doing similar work are invited to attend, and you are excluded because you've had a break from work because of your mental illness.
- You need some sort of adjustment to work arrangements because of your disability and the employer fails to make that adjustment. For example, your employer refuses your request to start work slightly later because the medication you are on makes it difficult to wake up early in the morning.
- You must comply with an employment-related rule or requirement that you either can't or would find it difficult to comply with because of your disability. For example, you are required to work with a lot of background noise.

It becomes **unlawful discrimination** if the employer does not have a lawful defence. There are three main ways that an employer can lawfully excuse its conduct:

- You are [unable to perform the inherent requirements](#) of the job, even after an adjustment is made.
- [The adjustment you need is not a reasonable adjustment](#) because to make the adjustment would impose an unjustifiable hardship on the employer.
- To not discriminate would cause an unjustifiable hardship to the employer.

[Discrimination law dealing with employment doesn't just apply once you've got a job, it applies to the recruitment process including, for example, the interview and any pre-employment tests or questionnaires.](#) Discrimination law also applies to a wide range of aspects of employment including how much you are paid, whether you get access to training and promotional opportunities, whether you get access to benefits related to the work or workplace, and also to being sacked or made redundant.

Under the *Fair Work Act 2009* (Cth), it is unlawful for an employer to take 'adverse action' against you because you have a disability.

Adverse action includes doing, threatening or organising any of the following:

- dismissing an employee;
- injuring an employee in their employment;
- altering an employee's position in a way that harms or disadvantages them;
- discriminating between one employee and other employees;
- discriminating against a potential employee in the terms and conditions employment that are offered.

If you think you have been discriminated against, you should get legal advice. You can get free legal advice about discrimination from a range of places. Click [here](#) to find out more.

7C.1.2: What are 'inherent requirements' of the job?

It is not unlawful discrimination if you don't get a job that you can't do. However, if you can do the 'inherent requirements' of the job (with or without a reasonable adjustment) then you have to be given the same consideration as any other candidate who can also perform the inherent requirements. If you are in a job and even if you are unwell for a period of time, so long as you can perform the inherent requirements of the job you must be given equal employment opportunities.

Inherent requirements are not necessarily the same thing as the essential or desirable criteria that are listed in a job description or duty statement, although those criteria generally should reflect the inherent requirements. Inherent requirements are likely to include:

- being able to perform the functions or tasks that are necessary to achieving the job outcomes;
- achieving an appropriate level of productivity;
- working to an appropriate quality standard;
- ability to work with those people whose jobs interact with the particular job;
- ability to work safely.

If your mental illness or treatment affects your ability to do the inherent requirements of the job, it may be possible that an adjustment could be made to the way the work is done—such as the hours that you are required to be in the workplace, or the location or layout of the workstation—that mean you can fulfil the inherent requirements. If you are in this situation, see the section on ['what obligations do employers have?'](#) for information about what you can do.

The NSW Disability Discrimination Legal Centre has a fact sheet, 'Am I entitled to adjustments in the workplace by reason of my disability?'. [Click here to download the fact sheet.](#)

7C.1.3: What obligations do employers have?

Employers must treat their workers fairly and without discrimination, and provide them with a safe and healthy workplace. Employers must also make sure other workers don't harass or humiliate you because, for example, of your mental illness.

Employers must make sure that their recruitment processes don't discriminate, that is, the recruitment process must be fair, and success in recruitment should be based on being the best person for the job. Excluding a person from a job because they disclose on their application, in a pre-employment questionnaire or in the interview that they have had depression, for example, would on the face of it be discriminatory.

If you apply for a job and require some change to the recruitment process to ensure that it is non-discriminatory, the employer must make that change so long as it is a 'reasonable adjustment', that is, an adjustment that doesn't cause unjustifiable hardship to the employer.

[If you have a job and are having difficulties with performing the inherent requirements of that job](#) because of your mental illness, there might be a change that could be made that would mean you could perform the inherent requirements. If that is the case, and the change is a 'reasonable adjustment', then the employer is obliged to make the change.

You may have a disability discrimination complaint if, for example:

- the recruitment process is discriminatory;
- you require a change to the recruitment process and your request is turned down;
- you ask for a change to the way your job is done or to your work environment and the employer refuses your request;
- you are the subject of name-calling or the butt of jokes at work, or subjected to any other humiliation or bullying at work;
- your employer discovers you have a mental illness and dismisses you.

If you think you have been discriminated against, you should get legal advice. You can get free legal advice about discrimination from a range of places. Click [here](#) to find out more.

7C.1.4: What questions can employers ask?

Employers can ask questions in the recruitment process that help them to decide who is the best applicant for the job. They are not, however, allowed to ask questions about disability or ask you, as a person with a mental illness, questions that they don't ask everyone if they are asking the questions in order to exclude you from the job because of your disability. This includes asking questions about history of mental illness.

Similarly, [employers are not allowed to ask their employees such questions if they are doing so in order to treat an employee with a disability in a way that is unlawfully discriminatory](#). An employer can, however, ask an employee questions about their mental illness in order to make changes to the workplace or work requirements that help the employee in their job.

If you think you have been asked discriminatory questions, either in recruitment or in employment, you should get legal advice. You can get free legal advice about discrimination from a range of places. Click [here](#) to find out more.

7C.1.5: Complaining about discrimination at work

If you think you have been discriminated in the workplace because of a disability (which includes mental illness) you can complain to one of the following organisations:

- The Australian Human Rights Commission;
- The NSW Anti-Discrimination Board; or
- The Fair Work Ombudsman.

All three of these investigate and try to resolve complaints of discrimination including employment discrimination. All of them have an online complaints form.

The Fair Work Ombudsman can take action against most employers for failing to obey the Fair Work Act 2009 (Cth). (Not all employers are covered by this Act. For example, the NSW Government is not covered but if you are a NSW Government employee you are protected against discrimination in the workplace by the Anti-Discrimination Act 1977 (NSW).

The Fair Work Ombudsman can only investigate and take action about workplace discriminatory practices that happened (or continued) after 1 July 2009. Complaints of discriminatory dismissal to the Fair Work Ombudsman must be made within 60 days of you being dismissed.

Complaints about employment discrimination (including discriminatory dismissal) under the Disability Discrimination Act 1992 (Cth) and the Anti-Discrimination Act 1977 (NSW) should be made within a year of the discrimination happening.

The **Australian Human Rights Commission** can be contacted by:

Phone: 1300 656 419 (local call cost*)

(02) 9284 9888

E-mail: complaintsinfo@humanrights.gov.au

Teletypewriter (TTY): 1800 620 241 (freecall*)

Fax: (02) 9284 9611

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

[Click here for the Commission's Online complaint form](#)

For more about the Australian Human Rights Commission's processes and what happens with discrimination complaints made to the Commission, click [here](#).

Fair Work Australia can be contacted by:

Telephone: 1300 799 675 (local call cost*)

Fair Work Infoline: 131 394

(Monday to Friday, 8:00 am to 6:00 pm)
Address: Level 8, Terrace Tower
80 William Street
EAST SYDNEY NSW 2011
E-mail: inquiries@fwa.gov.au
Website: <http://www.fwa.gov.au/>
(Live online help is available)

Click here for Fair Work Australia [Online complaint form](#)

The **NSW Anti-Discrimination Board** can be contacted by:
Sydney office

Postal address: PO Box A2122
SYDNEY SOUTH NSW 1235
Street address: Level 4, 175 Castlereagh Street
SYDNEY NSW 2000
Telephone: (02) 9268 5555
Freecall: 1800 670 812* (for rural and regional New South Wales only)
Teletypewriter (TTY): (02) 9268 5522
Fax: (02) 9268 5500
E-mail: adbcontact@agd.nsw.gov.au
Website: <http://www.lawlink.nsw.gov.au/adb>

Wollongong office

Postal address: PO Box 67
WOLLONGONG NSW 2520
Street address: 84 Crown Street
WOLLONGONG NSW 2500
Telephone: (02) 4224 9960
Freecall: 1800 670 812* (for rural and regional New South Wales only)
Teletypewriter (TTY): (02) 4224 9967
Fax: (02) 4224 9961

Newcastle office

Postal address: PO Box 1077
NEWCASTLE NSW 2300
Street address: Suite 3, Level 3, 97 Scott Street
NEWCASTLE NSW 2300
Telephone: (02) 4926 4300
Freecall: 1800 670 812* (only within New South Wales)
Teletypewriter (TTY): (02) 4929 1489
Fax: (02) 4926 1376

[Click here to go to the page where you can download the Board's complaint form.](#)

For more about the Anti-Discrimination Board's processes and what happens with discrimination complaints made to the Board, click [here](#).

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) and to local call numbers (numbers starting with 1300) are charged to the caller at the usual mobile rate.

7C.2: Employment and support services for people with mental illness

This section gives you information about:

- [The roles of JobAccess](#) and [Job Services Australia](#)
- [The Vocation Rehabilitation Services](#)
- [The Supported Wage System](#)
- [The role of the Commonwealth Rehabilitation Service](#)

7C.2.1: JobAccess

The Commonwealth Department of Employment, Education and Workplace Relations (DEEWR) is responsible for a number of services designed to help people with disability to get a job or return to the workforce. This first point of information and access to these services is the [JobAccess website](#).

You can contact a JobAccess Adviser on **1800 464 800***.

[To access information for job seekers with disability', click here.](#)

Most of the information on the employment services listed in this section is available on the [JobAccess website](#).

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

7C.2.2: Job Services Australia

[Job Services Australia](#) is a national network of organisations that help job seekers to find and keep employment.

Job Services Australia has replaced employment services such as the Job Network. Job Services Australia provides a single entry point for job seekers to access employment help and training opportunities.

[Click here to find out about specific services from Job Services Australia for people with disability or mental illness.](#)

7C.2.3: Disability Employment Services

Disability Employment Services combine vocational rehabilitation with employment help to support you to work independently in the open labour market if you have an injury, disability or health condition.

Disability Employment Services are uncapped, so that all eligible people with disability should have immediate access to the service they need. Previous multiple existing programs have recently been streamlined into two clearly distinct programs:

Disability Management Service for job seekers with disability, injury or health condition that require the assistance of a disability employment service but are not expected to need long-term support in the workplace.

Employment Support Service for job seekers with permanent disability and with an assessed need for more long-term, regular support in the workplace.

[For more information about the Disability Employment Services, click here to go to the website.](#)

7C.2.4: The Commonwealth Rehabilitation Service (CRS)

The Commonwealth Rehabilitation Service (CRS) Australia is the Australian Government provider of vocational rehabilitation services. It assists people with disability, injury or health conditions to get and keep a job. Vocational rehabilitation combines rehabilitation with employment to help job seekers get and/or keep a job.

CRS Australia may be able to help if you are a job seeker and you:

- have a disability, injury or health condition that affects your ability to get and/or keep a job;
- are aged between 14 and 65 years;
- are an Australian citizen or non-time-limited resident; and
- have a health condition that is sufficiently medically managed to allow you to participate in a vocational rehabilitation program.

Usually people are referred to the CRS after a job capacity assessment from Centrelink.

CRS Australia's has staff with expertise in helping people manage their mental illness to get and/or keep a job, this includes psychologists, social workers and rehabilitation counsellors. About a quarter of the people who CRS works with have a mental health condition and often these conditions are also accompanied by a physical injury or disability.

CRS can provide both early intervention and complex injury management services, including assessments.

A CRS psychological injury management assessment:

- determines what assistance you may need
- identifies suitable changes an organisation can make to prevent/manage psychological injuries.

[For more information click here to access the CRS Australia website.](#)

7C.3: Supported Wage System

If you are unable to get and/or keep a job at full pay rates because of the effect of your disability on your productivity, you may be able to be paid on the basis of your assessed productivity. In Australia, there is a supported wage system that allows this to occur and that provides a framework for employers who want to apply the supported wage system in their workplace.

If a supported wage approach is going to be taken, there will be an independent assessor involved to work out your productivity and then your wage level will be based on that. There is no cost to your employer or to you for this assessment.

[For more information, see the information on the Supported Wage System on the Job Access website.](#)

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Part 7 Section D: Education and training

This section of the Manual deals with education and training. You can find out more about:

- [Discrimination in education](#)
- [Support services for people with mental illness](#)

7D.1: Discrimination in education

This section of the Manual is about your rights in education. In it you can find out more about:

- [What is unlawful discrimination in education on the basis of mental illness?](#)
- [What obligations education providers have to avoid discrimination?](#)
- [What questions can education providers ask?](#)
- [Complaining about discrimination in education](#)

[You can also find out more about your rights to be free from discrimination in relation to education on the Australian Human Rights Commission's website by clicking here.](#)

These pages of the Manual deal with your right not to be discriminated against because of disability. In addition, you have a right not to be discriminated against (including) in education on the basis of a number of other personal characteristics, including:

- your gender, ie, whether you are a man or a woman;
- your marital status, ie, whether or not you are married;
- your sexual preference;
- your racial background;
- your age.

You can find out more about these other types of discrimination from the [Australian Human Rights Commission](#) and, in NSW, from the [Anti-Discrimination Board](#).

7D.1.1: What is unlawful discrimination in education?

There is a range of things that might happen to you in relation to education that may be unlawful discrimination. There are also things that might happen that may be discrimination, but not unlawful discrimination. For action to be unlawful discrimination, it needs to be more than simply unfair. It must relate somehow to the fact that you have a disability and that the person doing the action doesn't have a lawful excuse or 'defence'.

In general terms, it is discrimination if:

- you are treated worse in relation to any aspect of education or training than another person who doesn't have the same disability as would have been treated; and/or
- you need some sort of adjustment to the way in which education or training is provided because of your disability and the education provider fails to make that adjustment; and/or
- you must comply with a rule or requirement to access or participate in the education or training that you either can't or would find it difficult to comply with because of your disability.

It becomes unlawful discrimination if the education provider does not have a lawful defence. An education provider can lawfully excuse its conduct if:

- [The adjustment you need is not a reasonable adjustment](#) because to make the adjustment would cause the education provider to suffer an unjustifiable hardship.
- To not discriminate would cause an unjustifiable hardship to the education provider.
- The education provider can show that it has done what is required by the [Disability Standards for Education 2005 \(Cth\)](#).

Discrimination law dealing with education doesn't just apply once you've got into a course. [It also applies to the application or enrolment process](#). Discrimination law also applies to a range of aspects of education including whether you get access to any benefits provided by the education provider such as sporting facilities, libraries, etc; and also to being suspended or expelled from the education or training.

Discrimination laws also cover bodies that develop curriculum, not just the institutions that provide the actual teaching.

If you think you have been discriminated against, you should get legal advice. You can get free legal advice about discrimination from a range of places. Click [here](#) to find out more.

To find out more about how to complain about discrimination, click [here](#).

7D.1.2: What obligations do education and training providers have?

Education and training providers are obliged to treat people who use their services fairly and without discrimination. They also must make sure that their staff and other students don't harass, humiliate or victimise you because, for example, of your mental illness.

Education and training providers must make sure that all of the following aspects of education and training provision are non-discriminatory:

- The enrolment process and selection of students for admission
- Participation in the course or program and access to the facilities and services provided to students, such as course materials, library materials, sporting facilities, social activities, etc
- The development of curriculum, course design, process for assessment of students
- Access to support programs, both general and specific

The [Disability Standards for Education 2005 \(Cth\)](#) set out in detail the obligations on education and training providers to prevent discrimination.

You may have a disability discrimination complaint if, for example:

- the enrolment or student selection process is discriminatory;
- you need an adjustment to the enrolment process and your request is refused;
- you ask for an adjustment to the way the course is delivered or the way in which you are provided with course materials and the education or training provider fails or refuses to provide it;

- you are called names, are the subject of jokes or put-downs, or face any other humiliation or bullying in the education or training setting;
- you are not adequately consulted about your requirements.

If you think you have been discriminated against, you should get legal advice. You can get free legal advice about discrimination from a range of places. Click [here](#) to find out more. To find out more about making a complaint of discrimination, click [here](#).

7D.1.3: What questions can education and training providers ask?

Education providers can ask questions that help them to decide whether or not you have met the entry requirements (if any) for a course. They can also ask questions about what adjustments you might require in order to have equal opportunity in the course or training and any assessment process. They are not permitted to ask such questions in order to discriminate against you.

If you think you have been asked discriminatory questions, you should get legal advice. You can get free legal advice about discrimination from a range of places. Click [here](#) to find out more.

7D.1.4: Complaining about discrimination in education

If you think you have been discriminated against in education because of a disability (which includes mental illness) you can complain to one of the following organisations:

- The Australian Human Rights Commission; or
- The NSW Anti-Discrimination Board.

These bodies both investigate and try to resolve complaints of discrimination including education discrimination. Both have a complaints form that is available online.

Complaints about discrimination under the Disability Discrimination Act 1992 (Cth) and the Anti-Discrimination Act 1977 (NSW) should be made within a year of the discrimination happening.

The **Australian Human Rights Commission** can be contacted by:

Phone: 1300 656 419 (local call cost*)
 (02) 9284 9888
 E-mail: complaintsinfo@humanrights.gov.au
 Teletypewriter (TTY): 1800 620 241 (freecall*)
 Fax: (02) 9284 9611

[Click here for the Commission's Online complaint form](#)

For more about the Australian Human Rights Commission's processes and what happens with discrimination complaints made to the Commission, click [here](#).

The **NSW Anti-Discrimination Board** can be contacted by:
Sydney Office

Postal address: PO Box A2122
 SYDNEY SOUTH NSW 1235
 Street address: Level 4, 175 Castlereagh Street
 SYDNEY NSW 2000
 Telephone: (02) 9268 5555
 Freecall: 1800 670 812* (for rural and regional New South Wales only)
 Teletypewriter (TTY): (02) 9268 5522 Fax: (02) 9268 5500
 E-mail: adbcontact@agd.nsw.gov.au
 Website: <http://www.lawlink.nsw.gov.au/adb>

Wollongong office

Postal address: PO Box 67
 WOLLONGONG NSW 2520
 Street address: 84 Crown Street
 WOLLONGONG NSW 2500
 Telephone: (02) 4224 9960
 Freecall: 1800 670 812* (for rural and regional New South Wales only)
 Teletypewriter (TTY): (02) 4224 9967
 Fax: (02) 4224 9961

Newcastle office

Postal address: PO Box 1077
 NEWCASTLE NSW 2300
 Street address: Level 1, 414 Hunter Street
 NEWCASTLE WEST NSW 2302
 Telephone: (02) 4926 4300
 Freecall: 1800 670 812* (only within New South Wales)
 Teletypewriter (TTY): (02) 4929 1489
 Fax: (02) 4926 1376

[Click here to go to the page where you can download the Board's complaint form.](#)

For more about the Anti-Discrimination Board's processes and what happens with discrimination complaints made to the Board, click [here](#).

If you think you have been discriminated against, you should get legal advice. You can get free legal advice about discrimination from a range of places. Click [here](#) to find out more.

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) and to local call numbers (numbers starting with 1300) are charged to the caller at the usual mobile rate.

7D.2: Education Support services for people with mental illness

Most public education providers, such as the NSW Education Department, the TAFE (Technical and Further Education) sector and universities, have some form of support unit or program available to help people with disability. Some, but not all, private education and training providers (including schools, tertiary and vocational education and training providers) have support programs.

In addition, the Federal Government has a Higher Education Disability Support Program that provides money to higher education providers to make sure that their education services are accessible and provide equal opportunity to students with disability. [This program does not provide support direct to students. For more about this program, click here.](#)

The NSW Government has a webpage with information on support programs and services in education and training including state school and tertiary institutions such as TAFE colleges. [Click here to go to this webpage.](#) There is also information available on this page about what support is available for people with disability seeking to do apprenticeships and traineeships.

If you are thinking about doing an education or training course and think that you will need support of some sort because of your mental illness, you should contact the education provider and ask them what support programs they have in place.

Disclaimer

- The legal and other information contained in this Section is up to date to **Monday, 2 May 2011**.
- This Manual only refers to the law and practices applying to the Australian state of New South Wales (NSW).
- MHCC does not guarantee the accuracy nor is responsible for the content or the currency of the content of external documents and websites linked to this Manual.

Part 7 section E: Housing and accommodation

7E.1: Introduction

In Australia, everyone has the right to live somewhere safe and secure, but depending on the type of accommodation you live in, your rights and responsibilities may vary.

This section of the Manual sets out the different types of accommodation that are available, and the rights and responsibilities relating to each type of accommodation. It also provides information about who to contact and where to get help if you want to complain about your accommodation. There is also information about where to get support to live in the community and how to deal with problems in housing or accommodation, such as discrimination, tenancy dispute and problems with neighbours.

In this section of the Manual, you can find out about:

- [Your rights if you own your own house, unit or flat](#)
- Your rights as a renter/tenant, including your tenancy status; the rights for social housing tenants in public, community and Aboriginal housing; [share housing tenants; boarders and lodgers; residential park tenants and crisis accommodation](#)
- [Accommodation and rent support, including financial assistance and crisis accommodation](#)
- [Home and Community Care, including eligibility, costs, services available and how to access](#)
- [Housing and Accommodation Support Initiative \(HASI\), including eligibility and how to access](#)
- [Protected tenants](#)
- [Discrimination and accommodation](#)
- [Tenancy dispute resolution](#)
- [Handling problems with neighbours](#)
- [Getting legal advice, advocacy and support with your tenancy issue](#)

7E.2: our rights if you own your own house, unit or flat

If you own your own home, unit or flat, you have the same rights as other homeowners to privacy, quiet enjoyment, and the use of your own home. You also have the same obligations as other homeowners, such as to keep up with mortgage payments, payment of bills and rates.

7E.3: Your rights as a Renter or tenant

Unless you or your family is the owner of the property you live in, you are a renter or **tenant**. In general, a tenant is somebody who pays the owner of a property for the right to live in that property for an agreed period. The owner of that property is usually referred to as the **landlord**.

The following pages can tell you more about:

- [Your tenancy status, the laws and your rights](#)
- [Your rights as a tenant in New South Wales](#)
- [Different rights for social housing tenants](#)
- [Your rights as a tenant in share housing](#)
- [Your rights as a boarder or lodger](#)
- [Your rights as a residential park tenant](#)
- [Your rights as a tenant in crisis accommodation](#)

7E.3.1: Your tenancy status, the laws and your rights

Depending on your tenancy status, different laws apply to you, and your rights and responsibilities also differ. The main laws and regulations on tenancy are:

- *Residential Tenancies Act 2010* (NSW)
- *Residential Tenancies Regulation 2006* (NSW)
- *Residential Parks Act 1998* (NSW)

The *Residential Tenancies Act 2010* (NSW) and *Residential Tenancies Regulation 2010* (NSW) apply to most residential tenancies in NSW. The rights and responsibilities are generally the same whether you are renting from Housing NSW, Aboriginal Housing Office, a community organisation, a private landlord, or you are a permanent resident in a caravan park. These rights and responsibilities apply even if your tenancy arrangement or lease is based on a spoken agreement rather than a written one.

You are considered to be living in **share housing** if you are living with relatives, friends or others who own or are [renting the place](#), or [you are living in a boarding house or lodging](#). Depending on the share housing arrangement, your legal status, and therefore, your tenancy rights vary greatly.

If you live with relatives who are parents, brothers, sisters or children, your arrangement may be outside residential tenancy law.

7E.3.2: Your rights as a tenant in New South Wales

The *Residential Tenancies Act 2010* (NSW) and *Residential Tenancies Regulation 2010* (NSW) apply to most residential tenancies in NSW, including people renting private housing as well as social housing, such as community housing and public housing. The Act and Regulations set out the respective rights of landlords and tenants in the form of a **standard tenancy agreement**. The Act also gives powers to the Consumer, Trader and Tenancy Tribunal (CTTT) to hear and settle disputes about residential tenancies. Click [here](#) for information about CTTT.

Under the *Residential Tenancies Act 2010* (NSW), you must be given a copy of the Residential Tenancy Agreement. The agreement should clearly set out your rights and responsibilities as the tenant, and also the rights and obligations of the landlord.

While it is best to have a written agreement, agreements that are in other forms, such as oral, partially written and oral, or in the form of a lodger's licence, can still be recognised as a residential tenancy agreement. Regardless of the form they are in, all Residential Tenancy Agreements must have the effect of the standard form of agreement as prescribed by the *Residential Tenancies Act 2010* (NSW).

Sometimes a Residential Tenancy Agreement may have extra terms to those of the standard form of agreement, but these extra terms have no legal effect if they are inconsistent with those in the standard form.

Under the *Residential Tenancies Act 2010* (NSW), you also have a right to be given a completed condition report along with your Residential Tenancy Agreement before you move into the property. The condition report details the state of the property, including the level of cleanliness, repairs, and any fixtures, fittings, furniture or appliances.

The standard form for Residential Tenancy Agreement and condition report is available for download on the NSW Fair Trading website, [click here to go to the web page](#).

The Tenants' Union of NSW has a number of useful fact sheets that explains what the NSW law says about specific tenancy issues, these issues include:

- the law about how rent can be increased;
- the law on rent arrears – what may happen and what you should do if you are behind on your rent;
- the law on your and your landlord's obligation in relation to maintenance and repairs;
- the law on your right to privacy and your landlord's right to enter the premises;
- the law about tenants database and its use, and a number of other issues.

[Click here to go to the Tenants' Union of NSW website to see these fact sheets.](#)

The *Residential Tenancies Act 2010* (NSW) recognises the existence of co-tenants. Where the fixed term of the residency agreement has expired, a co-tenant may cease to be a co-tenant by giving the landlord and other co-tenants a written termination notice of at least 21 days and vacating the premises in accordance with that notice.

These provisions aim to deal with the common situation of a co-tenant vacating the premises, although remaining named as a tenant in the residential tenancy agreement, and potentially incurring a liability under that agreement.

A co-tenant who receives a termination notice from another co-tenant may request a termination order from the **NSW Consumer, Trader and Tenancy Tribunal**

To contact the NSW Consumer, Trader and Tenancy Tribunal call:

Telephone: 1300 135 399

Fax: 1300 135 247

Email enquiries: ctttenquire@cttt.nsw.gov.au

The NSW Consumer, Trader and Tenancy Tribunal can make a termination if they are satisfied that another co-tenant gave appropriate notice in the special circumstances of the case. This may be of assistance if a landlord or tenant wishes to remove or add locks or other security devices after a tenancy with a co-tenant has terminated. This right also applies to a tenant or occupant after they are prohibited from access under an apprehended violence order (AVO).

Where a final AVO is made prohibiting a co-tenant from having access, the tenancy of that tenant or co-tenant is automatically terminated. This does not affect the tenancy of any other tenants not subject to the AVO.

7E.3.3: Different rights for social housing tenants

Social housing is generally housing that is subsidised by government, and which is provided to people who might otherwise be denied access to the private rental market. Social housing includes public housing, community housing and Aboriginal housing.

Public housing is provided and managed by **Housing NSW**, which is part of the NSW Government.

Community housing is provided by community organisations, sometimes along with special facilities and services. There are three main types of community housing: housing associations, co-operatives and church-owned housing.

- Housing associations are professional not-for-profit housing providers, which often manage rental housing as well as provide other specialist services.
- Co-operative housing is subsidised by government but is fully managed by the tenants. This means the tenants have real control over their housing.
- Church-owned housing is provided by churches as a response to the needs in their local communities, and is usually provided using their own resources.

Aboriginal housing is provided through an Indigenous-controlled housing system. These properties are owned by the Aboriginal Housing Office, and are mostly managed by Housing NSW and Aboriginal community-based housing providers.

You must be an Aboriginal or Torres Strait Islander to be eligible for Aboriginal housing.

While the *Residential Tenancies Act 2010* (NSW) and *Residential Tenancies Regulation 2010* (NSW) apply to social housing as well as private rental, the rights of people in social housing are not entirely the same as those for people renting privately. For a start, social housing usually has eligibility criteria, such as being on a low income, and having complex housing needs. Also, some parts of the *Residential Tenancies Act 2010* (NSW) do not apply to tenants of Housing NSW, and most community housing has its own rules and policies that are separate from tenancy laws.

[For general information about social housing and your rights, click here to go to the Tenants' Union of NSW fact sheet on 'Social Housing'.](#)

Housing NSW also provides important information about living in social housing. Click on the links below to go to the relevant web pages:

[Living in public housing](#) has information about Housing NSW's obligations as the landlord, and information about the rights and responsibilities of public housing tenants.

[Living in Community Housing](#) has information about the rights and responsibilities of community housing tenants.

[Housing NSW also has information on housing and related services that are appropriate to the needs of Aboriginal people in NSW, click here for more information.](#)

7E.3.4: Your rights as a tenant in share housing

There are three types of arrangement in share housing: co-tenant; sub-tenant; and boarder or lodger. Your rights are dependant on which arrangement you are in:

Co-tenant: your name and the names of other tenants are on the residential tenancy agreement. You therefore jointly share the rights and responsibilities with the tenants whose names are also on the agreement. Your rights are set out by the *Residential Tenancies Act 2010* (NSW).

Sub-tenant: your name is not on the agreement, but you are responsible for part of the property (such as your bedroom). The tenant whose name is on the agreement is the head-tenant and is also your landlord. You have the same rights under the *Residential Tenancies Act 2010* (NSW) as other tenants have against their landlord.

Boarder or lodger: your name is not on a tenancy agreement. Your landlord has a lot of control over the property, including your room, and usually, there are house rules enforced. Boarders usually receive meals as part of the arrangement, whereas lodgers do not. The residential tenancy law does not apply to you, and you have limited rights and legal protections. For more about your rights click here, click [here](#).

The Tenants' Union of NSW has a fact sheet on 'Share Housing', which deals with issues commonly faced by tenants in share housing arrangements. [Click here to read the fact sheet.](#)

7E.3.5: Your rights as a boarder or lodger

The distinction between a tenant and a boarder/lodger is not always clear, but there are big differences in your legal rights. The *Residential Tenancies Act 2010* (NSW) applies to tenants but not to boarders and lodgers. At the time of writing this Manual, there is no other tenancy law that applies specifically to boarders and lodgers.

Sometimes, people living in accommodation described as 'boarding houses' or 'lodgings' are actually tenants. The key test is the amount of control the landlord has over the property. You are likely to be a considered a boarder/lodger if:

- your landlord has access to your room;
- you get meals, linen, or cleaning as part of the arrangement;
- you do not have your own cooking facilities;
- there are house rules enforced on the property.

If you have a dispute with your landlord and you are unsure whether the *Residential Tenancies Act 2010* (NSW) applies to you, you can take your dispute to the Consumer, Trader and Tenancy Tribunal (CTTT). If the CTTT decides it can handle the matter, then you are a tenant. If not, then you are a boarder/lodger. Click [here](#) for more information about getting your dispute heard by the CTTT .

People with Disability (Australia) provides individual advocacy to people living in boarding houses. Click [here](#) for information about how to contact them.

The Tenants' Union of NSW has a fact sheet that addresses issues commonly faced by boarders and lodgers, including information on where to get help about a tenancy dispute. [Click here to read the fact sheet.](#)

7E.3.6: Licensed boarding houses

Licensed boarding houses (also called 'licensed residential centres') provide housing to people with disability, including mental illness.

Under the *Youth and Community Services Act 1973* (NSW), properties that provide housing to two or more people with disability who need supervision or care are required to be licensed by the Office for Ageing, Disability and Home Care (OADHC) in NSW Human Services. These licenses include conditions relating to the standard of housing and care provided by the licensed boarding houses. The OADHC is responsible for monitoring licensed boarding houses and making sure that they comply with licence conditions.

If you want to make a complaint about a licensed boarding house in NSW, you can contact the **Office of Ageing, Disability and Home Care** directly by:

Phone: (02) 8270 2000
Teletypewriter (TTY): (02) 8270 2167
E-mail: info@dadhc.nsw.gov.au

You can also contact **People with Disability** (Australia) (PWD), which has an advocacy team specialising in providing independent advocacy assistance to residents of licensed boarding houses. Click [here](#) for more and how to contact PWD.

7E.3.7: Your rights as a residential park tenant

Residential parks include caravan parks, manufactured home estates, and 'mobile home villages'. They often provide long-term accommodation for a significant number of people. Some residents of residential parks own their dwelling but rent the site on which it sits; others rent both the dwelling and the site.

The main laws that apply to residential parks are:

- *Residential Parks Act 1998* (NSW)
- *Residential Parks Regulation 1999* (NSW)

These laws usually apply once you have signed an agreement to rent either the site only, or both the site and dwelling. The laws don't apply if you are renting the site for a holiday, or if it is not your main place of residence.

The next pages have information about:

- [What you need to know before signing a Moveable Dwelling agreement \(residential park tenants agreement\)](#)
- [Residential park rent increase](#)
- [Termination of agreement and park closure](#)
- [Where to get further information and advice](#)

7E.3.8: What you need to know before signing a Moveable Dwelling agreement (residential park tenants agreement)

The Moveable Dwelling Agreement is the agreement you sign for renting a park-owned dwelling and site, or a site on which you put your moveable dwelling.

Before you sign a Moveable Dwelling Agreement, you are entitled to be given a copy of the agreement to review. This should include the terms of the agreement and a condition report on the premises. Along with these, you must also be given the following information:

- A copy of the *Residential Park Living* booklet.
- The park rules.
- A list of all fees and charges that you will have to pay once you have signed the agreement.
- A document explaining that the tenancy may come to an end at some time in the future, for example because of park closure.

There is a list of standard questions that the park owner must answer, and their answers must be provided to you before you sign the agreement. The questions cover issues such as restrictions on the premises, like any restrictions on having visitors or pets, and restrictions on common park facilities; arrangements for energy supply and mail services; any protection for tenants if the park is sold; and any other regulations and restrictions that apply to the park residents (for example, if the residential park is part of a national park). [Click here to go to the Fair Trading web page to see the full list of questions.](#)

7E.3.9: Residential park rent increase

The park owner of the residential park in which you are living must give you at least 60 days notice if they want to increase your rent. The notice must be written, and it must show you the new rent amount and the date it takes effect.

If you are within the fixed-term period of agreement, the owner cannot increase your rent unless the agreement includes a term showing the amount and the date the increase takes effect (or if the new amount is not shown, then the precise method to calculate the increase must be shown). The owner must still give you 60 days written notice before the increase takes effect.

If you think the rent increase is too high (for example, if you think there are outstanding repairs that still need to be done and that should be taken into

account, or the new rent is a lot higher than similar sites in the park or in other parks), then you should first try and negotiate with the owner.

If the owner agrees to reduce the proposed rent increase, they will issue you with a new notice showing the new amount. The new notice will still take effect on the same date as the date listed on the previous notice.

If the owner does not agree to a smaller rent increase, you can apply to the Consumer, Trader and Tenancy Tribunal (CTTT) for an order that the rent is too high. **You must lodge an application with the CTTT within 30 days of receiving the rent increase notice.** Click here for more information about the [Consumer, Trader and Tenancy Tribunal and how to lodge an application](#).

7E.3.10: Termination of agreement and park closure

There are different reasons why a Moveable Dwelling Agreement may be terminated by you or your landlord. Depending on whether it is the landlord or the tenant terminating the agreement, the reason for the termination, and whether the agreement is within or after the fixed-term period, the requirements for notice are different.

The Fair Trading website has a fact sheet on the relevant notification requirements and how the notice of termination has to be given for it to be a legally effective notice. [Click here to read the fact sheet](#).

A residential park may be closed if it is to be redeveloped. The amount of notice required in this situation depends on your circumstances:

If you own the moveable dwelling and it has a rigid annex and you are renting the site, the owner must give you at least 12 months written notice to terminate the agreement. The termination notice can only be given if the local government authority (Local Council or Shire) has approved the development application for a change of use of the park. If no development approval is required, the Consumer, Trader and Tenancy Tribunal (CTTT) must have approved the park owner's termination notice before it can be issued). You may apply to the CTTT to challenge the termination or to get compensation for having to relocate. For more information, click here to view the Park and Village Service fact sheet on Park Closure: [If you own a manufactured home or a caravan/campervan with a rigid annex and rent the site](#).

If you own your moveable dwelling and it does not have a rigid annex, or you are renting both the dwelling and the site, the park owner must give you a written termination notice at least 60 days in advance. You can apply to the CTTT to challenge the termination, but you are not eligible for compensation for having to relocate. For more information, click here to view the Park and Village Service fact sheet on [Park Closure: If you own a manufactured home consisting of a caravan/campervan that does not have a rigid annex or rent the dwelling and the site](#).

7E.3.11: Where to get further information and advice

The Park and Village Service can answer questions about all aspects of residential park tenancies. Its website has a number of fact sheets that cover issues specifically related to residential park tenancies, including tenants' rights and responsibilities, fees and charges, park rules and park closures. [Click here to visit the Park and Village Service website](#) or phone the Park and Village Service on (02) 9566 1010. (The Park and Village Service is a community organisation.)

The NSW Fair Trading website has useful information about living in residential parks, including the rights of park residents, things to consider before signing up or moving out, where to get help to handle disputes, and the *Assistance protocol for residential park closures*. [Click here to go to the NSW Fair Trading website on residential parks](#). (NSW Fair Trading is part of the NSW Government.)

7E.4: Your rights as a tenant in crisis accommodation

Crisis accommodation includes refuges, shelters and other short- to medium-term accommodation provided to people who are homeless or at risk of becoming homeless. Much of this accommodation is provided by agencies funded under the Supported Accommodation Assistance Program (SAAP). Along with accommodation, these agencies often provide other support services such as health, counselling, and living skills development.

Most residents of crisis accommodation are boarders or lodgers, but depending on the circumstances, some may be tenants under the *Residential Tenancies Act 2010* (NSW). Crisis accommodation providers usually have policies about the types of people for whom they will provide accommodation, for example, many refuges will accommodate women and children only. Crisis accommodation services must not unlawfully discriminate against people, including on grounds of mental illness (for more about discrimination, click [here](#)). Crisis accommodation providers usually have house rules that residents must obey; for example, no alcohol on the property, or no visitors to the property.

For information about how to help to find crisis accommodation, click [here](#).

Contact your local **Tenants' Advice and Advocacy Service**, if you would like information about your rights and responsibilities, or advice about your tenancy status in crisis accommodation. [Click here to find you nearest service](#).

7E.5: Accommodation and rent support

Housing NSW can provide practical as well as financial help to people who are searching or applying for private rental housing.

- If you need information about private rental housing, click [here](#).
- If you need financial help with renting, click [here](#).
- If you need crisis accommodation, click [here](#)

7E.5.1: Getting information about private rental housing

Housing NSW has a training package, *Rent it Keep it*, to help people develop the skills they need to get into the private rental market and to keep their private rental housing. [Click here for more information about this](#).

If you would like to make a direct enquiry, you can contact **Housing NSW** by:

Phone: 1300 Housing (1300 468 746)*
Phone: 13 14 50 (if you need an interpreter)
Teletypewriter (TTY): 1800 628 310*

Or visit your nearest Housing NSW office. [Click here to find your nearest Housing NSW office.](#)

The Tenants' Union of NSW also has a range of fact sheets covering essential information that all tenants should know, including the rights and responsibilities of tenants in different types of accommodation, and how to deal with common tenancy issues, such as repairs and maintenance, and access and privacy. [Click here to view the Tenants' Union of NSW fact sheets available.](#)

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) and to Local call numbers (numbers starting with 1300) are charged to the caller at the usual mobile rate.

7E.5.2: Financial help – Rentstart

Housing NSW may be able to help you through Rentstart if you have found somewhere to rent privately but you need financial help with the bond or advance rent.

In general, you and your household members need to be eligible for Centrelink payments or Family Tax Benefit to be eligible for Rentstart. Rentstart provides four types of financial help, these are:

- **Rentstart Standard** provides partial help with paying the rental bond.
- **Rentstart Plus** provides additional financial help for people who are homeless, or facing severe financial barriers to private rental, or severe housing stress. Temporary housing may be provided if you are eligible for Rentstart Plus, but private rental accommodation isn't available.
- **Rentstart Tenancy Assistance** provides payment of rent for up to four weeks for eligible people who are facing eviction due to rental arrears.
- **Rentstart Move** helps public housing tenants who are moving into private rental at the end of their fixed-term lease.

For information about Rentstart's eligibility criteria or how Rentstart can help, [click here to go to the Housing NSW web page.](#) You can also get information by speaking to a Housing NSW staff member:

Phone: 1300 Housing (1300 468 746)*
Phone: 13 14 50 (if you need an interpreter)
Teletypewriter (TTY): 1800 628 310*

Or visit your nearest Housing NSW office. [Click here to find your nearest Housing NSW office.](#)

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) and to Local call numbers (numbers starting with 1300) are charged to the caller at the usual mobile rate.

7E.5.3: Crisis accommodation

The City of Sydney operates the Homeless Persons Information Centre and other services to help homeless people in Sydney find accommodation. Contact the **City of Sydney Homeless Persons Information Centre** for more information and referrals:

Phone: 1800 234 566 (freecall*)

Housing NSW also provides emergency temporary housing to those who are in housing crisis but require only short-term housing while they make longer-term arrangements. These are usually provided in the form of low-cost hotels, motels, caravan parks, and are provided from one night to a small number of nights. This **Housing NSW** service can be accessed during office hours:

Phone: 1300 Housing (1300 468 746)*
Phone: 13 14 50 (if you need an interpreter)
Teletypewriter (TTY): 1800 628 310*

Or visit your nearest Housing NSW office. [Click here to find your nearest Housing NSW office.](#)

If you need help finding emergency overnight accommodation, you can contact the **Housing NSW After-Hours Temporary Accommodation Service**, Monday to Friday 4:30 pm – 10:00 pm, and weekends and public holidays 10:00 am – 10:00 pm:

Phone: 1800 152 152 (freecall*)

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) and to Local call numbers (numbers starting with 1300) are charged to the caller at the usual mobile rate.

7E.6: Home and community care

7E.6.1: What is Home and Community Care (HACC)?

The Home and Community Care (HACC) Program provides a range of support services to frail older people, younger people with disability, and their carers to allow them to remain at home, and to prevent inappropriate or premature admission to residential care. HACC services are provided by a range of separate service providers.

In NSW, the Office of Ageing, Disability and Home Care is responsible the HACC Program, which is jointly funded by the Commonwealth and State governments.

7E.6.2: Who is eligible for Home and Community Care?

- Frail older people
- People with disability
- Their carers

7E.6.3: How much will it cost to get Home and Community Care?

Each HACC service provider has its own policy on fees, but most require a small contribution depending on the person's situation. Special consideration is given to people with limited finances.

A person will never be refused access to HACC services because they are unable to pay.

7E.6.4: How to access Home and Community Care services

There are three ways to access HACC services:

- Through referral from a general practitioner, other medical practitioner, health or medical services, Commonwealth Carelink Centres and other HACC service providers.
- Through the local Area Health Service or Aged Care Assessment Team.
- By contacting HACC service providers direct.

Your eligibility as well as your needs for services will be assessed before you will be able to join the program.

For more information about the HACC program, contact the **Office for Ageing, Disability and Home Care**:

Phone: (02) 8270 2000

Teletypewriter (TTY): (02) 8270 2167

E-mail: info@dadhc.nsw.gov.au

For more about what services HACC provides, click [here](#).

7E.6.5: What Home and Community Care (HACC) services are available?

If you are eligible for [Home and Community Care \(HACC\) services](#), these are the services that may be available to you:

- **Domestic assistance:** to help with household tasks such as cleaning, dishwashing, clothes washing, ironing, shopping and bill paying.
- **Personal care:** to help with daily self-care tasks including bathing, toileting and dressing and prescribed exercise and therapy programs.
- **Respite care:** to give carers an opportunity to have a rest or attend to other family responsibilities.
- **Home maintenance and modifications:** to provide maintenance, modifications and repairs to homes, gardens and yards to keep them in a safe and habitable condition. This can include doing regular garden upkeep, getting qualified tradespeople to carry out minor home repairs and maintenance, and putting in safety features, such as ramps, support rails in the bathroom, and widening doorways.
- **Transport:** to help with shopping and doctor's appointments and may also include transport for you to visit friends and go to social events. Help with transport may be provided either directly or indirectly, for example, through a taxi voucher or subsidies, or brokered through other transport providers.
- **Meals:** to help with meeting your daily nutrition requirements through preparation and delivery of meals and other food items. People with special dietary needs for health, religious or cultural reasons can have special meals arranged.
- **Nursing care and case management:** to have a trained nurse visit you in your home to improve or maintain your health. This may include teaching you and their carers how to best manage your daily health care in the home environment, clinical assessment of a client, co-ordination of home care services and monitoring of your health status and/or care plan, and direct clinical nursing care.
- **Social support:** to meet your need for social contact and to participate in community life.
- **Centre-based day care:** to provide group activities to you in a centre-based setting to assist with social interaction.
- **Allied health care:** to provide therapeutical services to help you maintain their independence and mobility. Services include physiotherapy, podiatry, speech therapy and occupational therapy.
- **Goods and equipment:** to provide for the loan or purchase of goods and equipment that help you with their mobility, communication, personal care and health care.
- **Linen services:** to provide and launder your household linen.

7E.7: Housing and Accommodation Support Initiative (HASI)

The Housing and Accommodation Support Initiative (HASI) is a partnership program between the NSW Government and the non-government sector that works to ensure stable housing is linked to specialist support for people with mental illness.

HASI recognises that people with mental illness can experience severe barriers to accessing affordable, safe and secure housing, and that access to appropriate support services are strongly linked to stable housing for people with mental illness.

HASI aims to assist people with mental illness who need accommodation support to:

- maintain successful tenancies;
- participate in the community;
- have better access to support services;
- experience decreased hospitalisation; and
- improve overall quality of life.

7E.7.1: What can the Housing and Accommodation Support Initiative (HASI) do?

HASI can provide the following help:

- accommodation support and rehabilitation associated with your disability, by providing services such as home care, life skills development, and help you with community participation, social and recreational activities;
- improve your access to clinical mental health care and rehabilitation;
- long-term, affordable and secure housing, with property and tenancy management services.

7E.7.2: Who is eligible for the Housing and Accommodation Support Initiative (HASI)?

There are three levels of support available: low, high and very high. The eligibility criteria differ for each of these support levels.

Overall, to be eligible for HASI, you need to be:

- Sixteen years or older
- Diagnosed with a mental illness
- Have high levels of psychiatric disability
- Have a low level of functioning;
- Have the capacity to benefit from being provided with accommodation support services
- Have given informed consent to participate in the program.

7E.7.3: How to access the Housing and Accommodation Support Initiative (HASI)

Access to HASI is by referral. The best way to access HASI is to contact your local mental health services and see a mental health practitioner. [Click here to find your local mental health services on the NSW Health website.](#)

7E.8: Protected tenants

A very small number of tenants are not covered by the *Residential Tenancies Act 2010* (NSW), and are instead covered by the *Landlord and Tenant Amendment Act 1948* (NSW). These tenants are often called 'protected tenants' because the *Landlord and Tenant Amendment Act 1948* (NSW) contains strong protections against evictions and rent increases. Protected tenants are almost invariably older persons, and their rented premises are old. No new protected tenancies have been created since 1986, although in some instances a protected tenancy may be inherited by another household member.

The law on protected tenancies is complex. You should get advice if you are unsure about whether you are a protected tenant. [You can do so by contacting your local Tenants and Advice Advocacy Service.](#)

If you are a protected tenant, you should get advice before vacating or leaving your accommodation temporarily (for example, to go into hospital or a residential treatment facility). Contact one of the following for information about protected tenancies:

[Older Persons Tenants' Service](#)

Phone: (02) 9566 1120

Freecall: 1800 131 310*

OR

Your local [Tenants Advice and Advocacy Service](#).

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

7E.9: Discrimination and accommodation

It is generally against the law to discriminate against a person in relation to housing or accommodation because the person, or an associate of the person (such as a household member) has a disability (including mental illness). Unlawful discrimination could include refusing housing or accommodation to a person, terminating a person's tenancy, or setting different conditions for a person (for example, a higher rent or bond, or a shorter tenancy term) because they have a disability.

There are some instances in which discrimination because of a person's disability is lawful. These include where:

- it would cause the accommodation provider unjustifiable hardship to accommodate the person (including where the person requires special services and facilities, and it would cause unjustifiable hardship to provide these);
- the accommodation is provided by a not-for-profit body especially for people with a particular disability that the person does not have; or
- the accommodation provider (or a relative of the provider) lives in the accommodation, and the accommodation is to be shared with fewer than six people.

There are laws and regulations relating to discrimination in the provision of accommodation under both the *Anti-Discrimination Act 1977* (NSW), for which the [NSW Anti-Discrimination Board](#) is responsible, and the *Disability Discrimination Act 1992* (Cth), for which the [Australian Human Rights Commission](#) is responsible. Each of these agencies investigates complaints of discrimination and attempts to conciliate between parties.

If you think you have been discriminated against, you should get legal advice. You can get free legal advice about discrimination from a range of places. [Click here](#) to find out more.

7E.10: Tenancy dispute resolution

The main organisation that deals with disputes about accommodation in NSW is the Consumer, Trader and Tenancy Tribunal (CTTT). The Tribunal is not as formal as courts like the District Court or the Local Court, but its decisions are legally binding and enforceable. It deals with disputes between:

- landlords and tenants under the *Residential Tenancies Act 2010* (NSW)
- park operators and residents under the *Residential Parks Act 1998* (NSW)
- owners and residents under the *Retirement Villages Act 1999* (NSW)

Boarders and lodgers may also be able to have some disputes dealt with by the General Division of the CTTT by making an application under the *Consumer Claims Act 1993* (NSW).

At a CTTT hearing, the disputing parties can't be represented by lawyers without the permission of the CTTT. However, landlords are often represented at the CTTT by the real estate agents who are likely to be quite familiar with the process. The CTTT may appoint a representative for people who are unable to

represent themselves due to disability or age. Otherwise, you can get legal advice by contacting your nearest Tenants' Advice and Advocacy Service. [Click here to find your nearest Tenants Advice and Advocacy Service](#)

[For more information about the CTTT and what it does, click here to visit the CTTT website.](#)

The next page has information about [how to apply to have your dispute dealt with by the CTTT](#).

7E.10.1: Applying for your dispute to be dealt with by the Consumer, Trader and Tenancy Tribunal (CTTT)

To lodge your complaint or dispute with the Consumer, Trader and Tenancy Tribunal (CTTT), you need to complete an application form and send it to the CTTT with the required payment. This can be done online, by post, or in person.

[To lodge an application online, click here.](#)

If you would like to lodge an application by post or in person, you can download the form at the CTTT website. [Click here to go to the CTTT website](#). Alternatively, you can also get a copy of the form from your local Tenancy Advice and Advocacy Service. [Click here to find your nearest Service](#). The completed form should be sent to your nearest CTTT office. To find the CTTT office nearest to you, refer to page 2 of the application form or [click here to go to the CTTT contacts page](#).

Application fee

Generally, an application costs \$34.

The fee may be reduced to \$5 if you are a pensioner or on a government benefit, including Austudy and Abstudy. You must provide a copy of the benefit card or Austudy/Abstudy advice.

You can apply for your application to be free if you can prove that paying the fee will cause you hardship.

The fee must be paid with an application, and if you are eligible for a fee concession, copies of the relevant documents must be sent with the application. If the relevant fee and documents are not submitted, your application may be dismissed.

The next page outlines [what will happen after you have made your application to the CTTT](#).

7E.10.2: What happens after you have made an application to the Consumer, Trader and Tenancy Tribunal (CTTT)?

After you have made your application to the CTTT, your dispute is listed for conciliation and hearing. You and the other party should be sent a Notice of Conciliation and Hearing within 14 days, telling you where and when you should attend.

Tenancy matters are usually listed for **conciliation** first, to see if the disputing parties can come together to discuss the issues and to reach an agreement. If an agreement can be reached, then a consent order will be made on the day without the need for a hearing. If an agreement can't be reached, then the dispute will go to a hearing. [For more about the conciliation process, click here to go to the CTTT web page](#).

If the dispute goes to a hearing, a Tribunal member will consider the evidence that you provide as well as the evidence provided by the other parties. Once the Tribunal member has considered all the evidence, he or she will make a legally binding decision.

The Tenants' Union of NSW website has a fact sheet that covers essential information about lodging a dispute with the CTTT, in particular information about the Tribunal hearing process. [Click here to read the fact sheet](#).

Your local Tenants Advice and Advocacy Service can also provide you with information and advice over the phone. [To find the contacts to your nearest Tenants Advice and Advocacy Service, click here](#).

7E.11: Dealing with Problems with neighbours

Whether you own your home or you are a tenant renting your home, you have a responsibility to avoid doing things that may cause nuisance or interfere with the reasonable peace, comfort and privacy of your neighbours. This responsibility applies equally to you as well as to your neighbours, and is usually set out in your tenancy agreement (if you are a tenant).

When neighbours are upset about each other's behaviour, there are a number of ways to deal with the problem, and these are discussed on the following pages:

- [How to deal with problems that don't involve violent behaviour](#)
- [Using mediation to resolve neighbour disputes](#)
- [What to do if the problem is severe or threatens](#)
- [Neighbour problems in public housing](#)

7E.11.1: How to deal with problems that don't involve violent behaviour

Examples of behaviour or actions that are non-violent but may nevertheless be concerning to the neighbours include:

- loud noise, especially at night;
- trespassing: this is when someone enters another person's home or property without the owner's permission, or when someone has been asked to leave by the owner but refuses to do so;
- routinely putting objects into the neighbour's home or property (such as routinely throwing a ball into the neighbour's backyard or your pet regularly entering your neighbour's yard);
- plants that have grown into the neighbour's property.

If your neighbour is behaving in ways such as those listed above and you are concerned about that, the first thing you should do is to approach your neighbour politely and talk directly to him or her about your concern. It is best to do this at a time that is convenient for both yourself and your neighbour. This means it is not a good idea to do this just before either of you are about to go to work or are about to cook dinner. It might be a good idea to ask your neighbour when it would be convenient to drop by to speak to them.

Similarly, if your neighbour approaches you because he or she is concerned that your behaviour is affecting their ability to enjoy the peace, comfort or privacy of their own home, you should listen to your neighbour's concern and calmly talk the issue through, to see if together you can work out a solution.

For tips on how to deal with minor problems between neighbours, click here to download the Community Justice Centres' brochure: [Some Suggestions on How to Deal with Conflict](#).

The **Law Society of New South Wales** also has an online fact sheet about the common problems people have with their neighbours and your legal rights in relation to these problems. [Click here to view the online fact sheet](#).

[Click here for what you can do if the problem is severe or threatens your physical safety](#).

You might also want to have someone help you to resolve the dispute through mediation. To find out more, click [here](#).

7E.11.2: Using mediation to resolve neighbour disputes

If you and your neighbour had tried to talk the issue out, but still can't reach an agreed solution, you can take the dispute to a **Community Justice Centre**. At Community Justice Centres there are trained mediators who can help you and your neighbour discuss the issue and reach a settlement in a safe and neutral environment.

The mediator's role is to help you understand each other's point of view. Mediators do not judge who is right or wrong and they cannot impose any punishment.

Mediation at a Community Justice Centre is free and is voluntary, but it can only work if both of the disputing parties agree to attend the mediation. Legal representation is normally not required in mediation, though it is often a good idea to talk to a lawyer to find out about your rights and have your legal questions answered before you go to a mediation session. Settlements reached through mediation are made in good faith and are not legally enforceable.

If mediation does not work, the Community Justice Centre may be able refer you on to another relevant agency to help you.

If you would like more information about mediation, how it works and how to access the service, [click here to go to the Community Justice Centre's website](#) or call 1800 990 777 (free call*).

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

7E.11.3: What to do if the problem is severe or threatens your physical safety

If your neighbour is harassing you, damaging your property or behaving in ways that make you feel unsafe, such as making threats of violence against you, you should contact the police. Depending on the actual problem, the police may apply for an Apprehended Violence Order against your neighbour or may even charge your neighbour for a criminal offence. To read more about Apprehended Violence Orders, click [here](#).

If you are the person being complained about, you can contact LawAccess on 1300 888 529* for free legal advice or referral.

* Remember, mobile phone calls to Local call numbers (numbers starting with 1300) are charged to the caller at the usual mobile rate.

7E.11.4: Neighbour problems in public housing

The information on earlier pages about how to handle problems with neighbours applies to anyone who has neighbours, but if you live in public housing, Housing NSW also has a policy about being a good neighbour, which forms part of its over all *During a Tenancy Policy*. [Click here to read the *During a Tenancy Policy*](#).

Generally, if the problem is minor and does not involve violence, Housing NSW encourages neighbours to sort out their dispute directly or through mediation at a Community Justice Centre. You can contact your local Housing NSW office if you would like to be referred to a Community Justice Centre for mediation.

For more about resolving a dispute with your neighbour directly, click [here](#).

For more about using mediation to resolve a dispute with your neighbour, click [here](#).

If you have made a complaint to your local Housing NSW office, your Client Service Officer will want evidence you have that is relevant to your complaint, and may also ask you to fill in a form to describe what happened. If the behaviour being complained about is a breach of the Tenancy Agreement, Housing NSW will investigate the complaint. If the complaint is proved to be true, the person causing the problem is usually given a chance to change that behaviour, providing that the behaviour does not threaten the safety of other tenants. If the person continues to breach the Tenancy Agreement, Housing NSW may take further actions against that person:

- Housing NSW may issue a Notice of Termination; or
- Housing NSW may apply to the Consumer, Trader and Tenancy Tribunal (CTTTT) for a hearing, seeking for an order:
 - to make sure the person complies with the Tenancy Agreement; or to end the person's tenancy; or
 - to immediately end the tenancy and take back the premises.

If the problem is severe, for example, there is harassment, intimidation, violence or drugs involved, you should report it to the police and then to your local Housing NSW office.

[For more information on how Housing NSW responds to complaints, click here to go to its web page to download the fact sheet, 'Client Feedback'.](#)

If you are the person being complained about, and you want advice on how to deal with the complaint, you should contact your local Tenants Advice and Advocacy Service. [Click here to locate the contacts of your nearest Tenants Advice and Advocacy Service.](#)

7E.12: Getting legal advice, advocacy and support with your tenancy issue

There are a number of organisations that can provide help and advice on your tenancy. It may be useful to visit the following websites for information:

- [Tenants Advice and Advocacy Service – click here to locate the contacts of your nearest service](#)
- [NSW Fair Trading](#)
- [Park and Village Service](#) (for residential parks tenants only)
- [Older Persons Tenants' Service](#) (for tenants who are 55 years or older, and all protected tenants)

or phone LawAccess on 1300 888 529*

You can also find out more about getting help in Part 10 of this Manual: Complaints and disputes and [getting help to resolve them](#).

* Remember, mobile phone calls to Local call numbers (numbers starting with 1300) are charged to the caller at the usual mobile rate.

Disclaimer

- The legal and other information contained in this Section is up to date to **Monday, 2 May 2011**.
- This Manual only refers to the law and practices applying to the Australian state of New South Wales (NSW).
- MHCC does not guarantee the accuracy nor is responsible for the content or the currency of the content of external documents and websites linked to this Manual.

Part 7 Section F: Social security

7F.1: Introduction

This section of the Manual looks at social security law from the perspective of someone who has been diagnosed with a mental illness in NSW.

People with mental illness often find themselves dealing with Centrelink, the Commonwealth Government agency that manages social security benefits or payments.

A mental illness can affect how a person interacts with Centrelink in several ways:

- Having an acute mental illness might make you eligible, if you have no other source of income, to get a Disability Support Pension.
- You might already be on a pension or benefit and the symptoms of your mental illness may make it difficult to follow the rules for getting that pension or benefit.

This section part looks firstly at [how you can access Centrelink and the services it can provide](#).

The [second part](#) looks at eligibility for those benefits that are more likely to be relevant to someone with mental illness. These are the Disability Support Pension and Sickness Allowances as well as Newstart and the Youth Allowance.

[The final part looks at how decisions by Centrelink can be challenged, either when Centrelink says you are not eligible for a benefit or when your benefits are stopped or changed.](#)

If you have any general questions or need advice about your pension or benefit you should contact the Welfare Rights Centre. Phone **1800 22 6208*** or [click here for more information about the Welfare Rights Centre](#).

The Aged-Care Rights Service (TARS) also gives advice about pensions and benefits relevant to seniors in the community. [Click here to contact TARS](#) or phone TARS on (02) **9281 3600** (Sydney), or **1800 424 079***.

The National Welfare Rights Network has an information page about complaining about Centrelink decisions and service (this is different from asking for a review of a Centrelink decision or an appeal). [Click here to go to this webpage](#).

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

7F.2: Centrelink

Centrelink is part of the Australian Government.

It manages social security policy and it is responsible for making sure that all social security payments are made in an accurate and timely manner.

Most people who have to deal with Centrelink have contact through a Centrelink Customer Service Centre.

7F.2.1: What happens at Centrelink Customer Service Centres?

There are Centrelink Customer Service Centres across Australia. Each Centre has three main sections:

- Retirement: which deals with Age Pension, Wife Pension, Widow Pension, and Carer Pension
- Employment Services: which deals with Newstart Allowance, Youth Allowance, Disability Support Pension, Carer Payment, and Special Benefit
- Family Assistance: which deals with Family Tax Benefit, Parenting Payment and Double Orphan Pension.

If you want to make a claim for any sort of Centrelink payments and allowances this is done at a Centrelink Customer Service Centre. Other activities at Centrelink Customer Service Centres include the following:

- You can get answers to questions about Centrelink payments and allowances
- You can give Centrelink documents that are needed to support your claim for a payment
- You can get Centrelink forms and publications about Centrelink payments and allowances
- Centrelink officers make decisions about whether or not you are entitled to any Centrelink payments and allowances
- You can challenge Centrelink decisions

Staff at the Centrelink Customer Service Centres include the following:

- Section Managers: who can make initial decisions but who more frequently supervise and review decisions made by other officers.
- Senior Customer Service Advisers: who provide help to people with disability. They can also assess and refer you to appropriate employment services, help you get access to training and vocational rehabilitation in your local area, advise you on medical eligibility for disability and carer-related payments, and help you if you are not ready for employment assistance by linking you to your local disability and carer organisations.
- Customer Service Officers: who can handle your initial enquiries and give you information and advice.
- Social Workers: who do not make decisions but can act as a liaison between you and the other Centrelink staff.

In some offices, other staff may include interpreters, Multicultural Service Officers and Indigenous Officers.

7F.3: Pensions and benefits relevant to mental illness

There are several pensions and benefits that may be available to you if you have a mental illness:

- [Disability support pension](#)
- [Allowances if you are acutely unwell and/or hospitalised](#)
- [Sickness allowance](#)

7F.3.1: Disability Support Pension

A mental illness is a disability for the purpose of eligibility to a Disability Support Pension.

A Disability Support Pension may be paid to you if you are 16 or over (but not eligible for the aged pension), and have a disability, illness or injury that will stop you from working or retraining for working full time (15 hours per week) for two years or more.

The Disability Support Pension is means tested. If you or your partner's income and assets are above a certain amount, you may only be eligible for a reduced pension amount or not eligible for a pension at all.

If you have not claimed the Disability Support Pension before, you can be referred to a job capacity assessor. If the assessor finds that you are able to work for at least 15 hours a week, you will not get the Disability Support Pension.

The job capacity assessment is part of the Job Access program. Job Access is an information and advice service funded by the Australian Government. It offers help and workplace solutions for people with disability and their employers. [To access the job access website, click here.](#)
[For more information about job capacity assessments click here.](#)

For more information about Disability Support Pensions:

- [Click here for information from Centrelink](#)
- [Click here to download the fact sheet from the National Welfare Rights Network](#)
- [Click here for information from the Chronic Injury Alliance](#)

7F.3.2: Allowances if you are acutely unwell and/or hospitalised

If your illness, injury or disability prevents you from working or studying for only a short time, then depending on your age and other circumstances, you may be eligible for Sickness Allowance, Newstart or Youth Allowance. If you were hospitalised, either as a voluntary or involuntary patient, and you expect to return to work or full-time study after you are discharged, then you can claim a Sickness Allowance.

If you lose your job because of mental illness or you become an involuntary patient under the [Mental Health Act 2007 \(NSW\)](#) and you subsequently lose your job, then you are likely to be eligible for Newstart or a Youth Allowance. If you are in hospital, the hospital social worker can advise and help you with this.

If you are already on Newstart or a Youth Allowance, and you are either at home or in hospital being treated during an acute phase of mental illness, you will need to have someone go to Centrelink on your behalf with supporting written medical information to ask for you to be exempt from the activities tests. If you do nothing in these circumstances, you can be taken off your current benefit for failing to comply with Centrelink's activity tests. If you are in hospital you should talk to the hospital social worker about this as soon as possible after your admission. If you are being treated in the community, you should talk to your case manager about this. You are not eligible for Sickness Allowance in these circumstances.

7F.3.3: Sickness Allowance

Sickness Allowance may be paid to people who are temporarily unable to work or study due to an illness, injury or disability and are:

- 21 or over and have a job;

- 21 or over and on ABSTUDY; or
- Over 25 and receiving Austudy.

You must have work or study to return to when you are better.

[Click here to go to the National Welfare Rights Network to download the fact sheet on Sickness Allowance.](#)

[For more information about other benefits and payments available from Centrelink, click here to go to their website.](#)

7F.3.4: Working and getting a pension or benefit

Almost all pensions and benefits are subject to an income or assets test. This means that the amount of money you get may be reduced by any other income you have. Income can mean money you earn from a part-time job, but it may also mean bank interest, superannuation payments, dividends or rent received.

You may also have a 'free' amount of income per fortnight, this is not counted for the income test. This depends on the sort of pension and benefit you are receiving, the number of dependents you have and whether you are single or not (that is, whether you are married or in a de facto relationship).

An assets test applies to all benefits and pensions except if you are legally blind.

The value of your family home is exempt from the assets test. Other assets can either reduce the amount of your benefit depending on their value or rule you out from getting a benefit altogether.

7F.4: Other pensions, benefits and allowances

[There is a range of benefits and payments available from Centrelink other than those that are particularly relevant to people with mental illness.](#) They all have complex eligibility rules, usually with equally complex means and assets tests.

The first place to find information about pensions, benefits and allowances is Centrelink itself. [Click here to find a Centrelink office near you](#) or [click here for a list of Centrelink telephone services.](#)

If you have doubts or concerns about information that Centrelink gives you, you can get further advice from a welfare rights specialist within a [Community Legal Centre](#) or from a [Welfare Rights Centre](#).

Examples of pensions, benefits and allowances are:

- Newstart Allowance: This is the allowance to support your income if you are unemployed and looking for work
- Youth Allowance: This is the income support payment if you are 16–20 years old and looking for full-time work or doing a combination of approved activities, or have a temporary exemption from the participation and activity test requirements. It is also the income support benefit if you are 16–24 years old and studying full time or doing a full-time Australian Apprenticeship.
- Aged Pension: To qualify for an aged pension if you are a male you must be at least 65 years old. To qualify if you are a female you must be at least 60 years old (note this is being gradually increased).
- Pensioner education supplement: The Pensioner Education Supplement (PES) helps you with the costs of full-time or part-time study.
- Carers benefits and allowances: This is an income support payment if you personally provide care to an adult with disability, a child with 'profound disability', or two or more children with disability.

[For more information about these other allowances and benefits, click here](#)

7F.5: Challenging Centrelink decisions

If you are not happy with a Centrelink decision, you can ask to have it reviewed. The first step in the process is [internal review](#).

If you are still not satisfied, you can ask for a further review and it will be reviewed by an [Authorised Review Officer](#). If you think the Authorised Review Officer has got it wrong, you can appeal to the [Social Security Appeals Tribunal \(SSAT\)](#). The decision of the SSAT can also be appealed, this time to the [Administrative Appeals Tribunal \(AAT\)](#). Either you or Centrelink can appeal to the AAT.

[If you are going to challenge a Centrelink decision, you should consider getting advice about how to do this.](#)

7F.5.1: Internal reviews

If you think Centrelink has made a wrong decision, you can ask for it to be reviewed. This does not cost anything.

You should contact Centrelink as soon as possible because if the decision is changed, you can be back-paid. It is important that you ask for a review of the decision as soon as possible as certain time limits apply.

A first option is to have the person who made the original decision explain it. This is an opportunity to correct misunderstandings, present new information or evidence and to get an incorrect decision changed immediately. You do not have to take this step and can immediately ask for a formal review.

The next step is to apply for a review by a senior Centrelink officer called an Authorised Review Officer. This person is independent of the Regional Office. They will contact you, and look at the decision again after they have talked to all those involved in the decision and taken into account any new evidence. They will tell you the outcome of their review and your appeal rights if necessary.

Contact between you and the Authorised Review Officer is almost always made by telephone (using the Telephone Interpreter Service where needed). Review by the Authorised Review Officer should take no more than ten working days or less in an emergency. If the decision is unfavourable to you, the Authorised Review Officer will write to you setting out the reasons for the decision.

7F.5.2: Getting a benefit or pension while the review is taking place

If you ask for a review of a decision, Centrelink may agree to continue your payment at the rate you were getting until the review is finalised. This is called 'payment pending review'. Centrelink can do this if the decision being reviewed is the result of it exercising a discretion, or 'holding an opinion', or if a 'participation penalty' has been imposed on you.

You should put in a request for a 'payment pending a review' at the same time as you put in your review request, preferably in writing.

7F.6: Appeal to the Social Security Review Tribunal (SSAT)

If you think the Authorised Review Officer's decision is wrong, you can appeal to the Social Security Appeals Tribunal (SSAT). A negative outcome of review by an Authorised Review Officer does not mean that an appeal will be unsuccessful at the SSAT. For more about how to appeal to the SSAT, click [here](#).

Centrelink staff can give you information about an appeal to the SSAT.

The SSAT is a relatively informal tribunal and tribunal members include lawyers, community and welfare workers, doctors and people with knowledge of Centrelink procedures.

The SSAT can confirm the original decision, change the decision, or give a new decision.

You need to apply within three months of getting the Authorised Review Officer's decision in writing. There can be no backdated payments for more than three months' benefit.

It costs nothing to appeal to the SSAT. Even if an appeal is lodged and later withdrawn, there are no fees or penalties involved. To help applicants get to the hearing, SSAT pays reasonable travel costs for the applicant, but not for friends or relatives.

If needed, SSAT provides and pays for interpreters. SSAT does not pay fees of lawyers or other professionals if you choose to be represented at the hearing.

SSAT cannot order Centrelink to continue payments while you are waiting for the outcome of the appeal. Enquiries about continuing to get payments while you are waiting for the appeal should be directed to the Manager of the Centrelink office where the original decision was made.

7F.6.1: How to appeal to the Social Security Appeals Tribunal (SSAT)

The SSAT has an application form that is available from Centrelink offices, Authorised Review Officers or from the Tribunal itself. The form includes an addressed and postage paid envelope. It may be posted, faxed or lodged at any SSAT office or lodged with or faxed to any office of Centrelink.

Appeals may be made any time after the Authorised Review Officer's decision is made, but it is best to do it as soon as possible and certainly within thirteen weeks of getting that decision. This is because, if the SSAT finds in your favour, there are limits on the amount of back payment you can get if you made the application more than thirteen weeks after getting the Authorised Review Officer's decision.

It costs nothing to appeal to the SSAT. Even if an appeal is lodged and later withdrawn, there are no fees or penalties involved. To help applicants get to the hearing, SSAT pays reasonable travel costs for the applicant, but not for friends or relatives.

7F.6.2: What happens after you have appealed to the Social Security Appeals Tribunal (SSAT)?

The SSAT takes about four weeks to respond to an appeal application. It will send a letter that tells you the hearing date and a copy of Centrelink's submission (written argument) to the SSAT. There is usually about a six to eight week wait for appeals to be held by the SSAT. If this delay will lead to hardship, you should tell SSAT this at the time of lodging the appeal form.

You may ask for access to your Centrelink files under the freedom of information (FOI) law if you are not satisfied that all relevant documents have been provided. FOI requests should be made direct to Centrelink. For more information, click [here](#).

You can withdraw the appeal at any time. SSAT can dismiss your appeal if you fail to contact the Tribunal when asked to do so, fail to make an appointment for the hearing, or fail to attend the hearing.

If you have lodged an appeal, you will need to prepare for the appeal hearing. [Click here to find out more about what you should do before the SSAT hearing](#). It is also useful to know what will happen at and after the hearing. To find out, click [here](#).

7F.6.3: What should you do to prepare for the Social Security Appeals Tribunal (SSAT) hearing?

If you are representing yourself at the SSAT hearing, you can use the following as a checklist to help you prepare for the hearing:

- If your circumstances change, do not wait for the appeal to be finalised, lodge a new claim with Centrelink immediately. (This might avoid possible hardship while waiting for the appeal process to be finalised.)
- If you have no income or are experiencing hardship you may be eligible for continuation of your current payment while you wait for your appeal to be finalised or for another type of payment, such as Special Benefit. If you think this applies to you, contact Centrelink about possible payment and tell the SSAT of your circumstances when you lodge your appeal form and ask for your appeal to be dealt with urgently.
- You should tell the SSAT if you need an interpreter, either for you or any witnesses you might want to have at the hearing to give evidence.
- Gather information or documents relevant to the claim as evidence to give to the SSAT.
- At the hearing you will have the opportunity to tell the SSAT what they think is important so prepare what you want to tell the Tribunal.
- Do not be afraid to prepare questions about any aspect of the appeal.

You should supply as much relevant information as you can to the Tribunal. The Welfare Rights Centre's self-help guide sets out a list of information it recommends you should take to the Tribunal hearing of your review. [To access this guide, click here](#).

7F.6.4: What happens at the Social Security Appeals Tribunal (SSAT) hearing?

The hearings of the Social Security Appeals Tribunal (SSAT) are informal. The Tribunal membership will usually be a lawyer and two other members, sometimes a doctor or another health professional. The Tribunal members will listen to what you say, read any relevant documents you provide, and ask questions. Centrelink does not have a person at the hearing but supplies its case to the Tribunal in writing. The Tribunal will consider what Centrelink has provided.

Sometimes the Tribunal hearings are held over the telephone or by videoconference.

You should supply as much relevant information as you can to the Tribunal. The Welfare Rights Centre's self-help guide sets out a list of information it recommends you should take to the Tribunal hearing of your review. [To access this guide, click here](#).

7F.6.5: Powers of the Social Security Appeals Tribunal (SSAT)

The SSAT generally has the power to confirm, vary or set aside the decision it is reviewing. The Tribunal can also refer the decision or parts of it back to Centrelink for reconsideration.

7F.6.6: What happens after the Social Security Appeals Tribunal (SSAT) hearing?

After the appeal hearing, the Tribunal members discuss all the information in private and come to a decision based on the facts, the relevant law and the merits of each case.

Within 14 days of making the decision, the Tribunal must tell you:

- The decision it has made;
- What the Tribunal decided happened (the facts of the case);
- The evidence the Tribunal relied on to decide on the facts of the case; and
- The reasons for its decision.

The SSAT may adjourn (delay) a case until a later date. This may be to give you time to provide extra information, or to allow the SSAT to get extra information or research the law. You will be told in writing of any delay in the case and will be given a chance to comment on any new information that is not favourable to your case.

[Click here for more information on how to appeal to the SSAT](#), or [here](#).

7F.7: Appeal to the Administrative Appeals Tribunal (AAT)

If you think a decision by the Social Security Appeals Tribunal is wrong, you can appeal to the Administrative Appeals Tribunal (AAT). The AAT is more formal than the SSAT, and you must appeal in writing within 28 days of getting the SSAT decision. However, you can apply to the AAT for an extension of the 28-day time limit.

There is no fee to apply to the AAT on a social security decision.

[Legal Aid NSW](#) provides financial help to get legal representation in social security cases being dealt with by the AAT. [This help is subject to the usual Legal Aid policies on means, assets, merits and contributions](#). If you are appealing to the AAT you should try to get legal assistance. Click [here](#) to find out more about getting legal help.

The AAT can confirm the decision, change the decision or give a new decision.

Payment can be backdated but only to the time of the wrong decision if you asked for the review within three months of the decision. If you have been given an extension of the 28 days to apply, payment will only be backdated to the date you asked for the review rather than to the date of the decision itself.

7F.8: Where to get independent advice and assistance

You should if possible before lodging the appeal seek independent advice and ask about your chances of success. By all means talk to Centrelink, but do not rely totally on the information you get from Centrelink.

You can get free legal advice from a [Welfare Rights Centre](#).

You could also ask [Legal Aid NSW](#) through [LawAccess](#) on **1300 888 529*** for general legal information and advice.

(Legal Aid will assist in paying for legal representation at the Administrative Appeals Tribunal but not normally at the Social Security Appeals Tribunal).

When you appeal against a decision of Centrelink to the SSAT, the Welfare Rights Centre may offer you representation by a lawyer or a social worker. The Welfare Rights Centre will also provide advice if you feel more confident about running your own appeals.

* Remember, mobile phone calls to Local call numbers (numbers starting with 1300) are charged to the caller at the usual mobile rate.

7F.8.1: Welfare Rights Centres

Welfare Rights Centres provide information, advice and representation to people affected by decisions made by Centrelink. The assistance they provide is free.

The Centres operate on the principle that social security is a right, not a privilege. They work on the principle that people affected by Centrelink decisions should be able to have decisions re-examined if they either do not understand the decision or believe it is incorrect.

You can contact a Welfare Rights Centre about:

- Eligibility for particular payments: for example, whether you are likely to be eligible for a Disability Support Pension, or some other pension or benefit;
- Information: for example, to find out what information Centrelink is allowed to obtain from people; and
- Rejection of applications for payment: if you applied for a Disability Support Pension but were rejected.

There is a Welfare Rights Centre in NSW and it offers an independent assessment of all decisions referred to it. It can act as an intermediary if communication between you and Centrelink has broken down. It can help by finding out what information is missing or has been wrongly interpreted.

The **Welfare Rights Centre** is located in Sydney:

Phone: (02) 9211 5300
Freecall: 1800 226 028* (from outside Sydney)
Fax: (02) 9211 5268
Teletypewriter (TTY): (02) 9211 0238
E-mail: welfarerights@welfarerights.org.au
Street and Postal address: Suite 102, 55 Holt St
SURRY HILLS NSW 2010

The Welfare Rights Centre also has staff in Wollongong at the **Illawarra Legal Centre**:

Phone: (02) 4276 1939
Fax: (02) 4276 1978
Teletypewriter (TTY): 133 677
Street address: 7 Greene Street
WARRAWONG NSW
Postal address: PO Box 139
WARRAWONG NSW 2502

There is a Welfare Rights and Legal Centre in **Canberra** that provides services to South West NSW:

Phone: (02) 6247 2177
Fax: (02) 6257 4801
Teletypewriter (TTY): (02) 6247 2018
E-mail: wrlc@netspeed.com.au
Street address: Havelock House
Gould Street
TURNER ACT
Postal address: PO Box 337
CIVIC SQUARE ACT 2608

7F.9: Right to get access to information

Under the Commonwealth *Freedom of Information Act 1982* (FOI Act), if you are receiving payments and you wish to challenge a Centrelink decision, you have a right to get on request:

- Copies of any statements of fact that you have made to Centrelink;
- Copies of any documents that you have provided to Centrelink; and
- Detailed reasons for any decision made by Centrelink.

However, the personal details of another person, and information judged by Centrelink to be prejudicial to your psychological wellbeing or prejudicial to the public interest will not be given to you.

You can make an FOI request for your Centrelink document in writing or using the form linked below. [Click here for more information.](#)

[Click here for the Centrelink form to access or change information.](#)

Disclaimer

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- This Manual only refers to the law and practices applying to the Australian state of New South Wales (NSW).
- MHCC does not guarantee the accuracy nor is responsible for the content or the currency of the content of external documents and websites linked to this Manual.

Part 7 Section G: Family law and issues about caring for your children

7G.1: Introduction

This section deals with what happens if you have a mental illness and are involved with family law or child welfare issues or if you become involved with family law in part because of mental illness or what someone else sees as symptoms of a mental illness.

The section deals with [divorce](#) and [property settlements \(arrangements about who will get what property when a relationship breaks down\)](#) as well as [parenting issues](#).

There is a separate section of the Manual that tells you more about what are called in NSW 'care and protection' (of children) matters. This used to be called 'child welfare'. Click [here](#) to find out more .

You can become involved with the family law if:

- Your marriage or long-term relationship breaks down
- [You are married and either you or your spouse want to get a divorce](#)
- [You and your spouse are divorcing and you can't agree about who will get what property and other assets](#)
- [You are the birth parent of a child or children under 18 years of age and you can't agree about who will look after them](#)
- You are the birth parent of a child or children under 18 years of age, and are separated from the other parent, and you can't agree about visiting rights
- If you are not the biological parent of a child or children under 18 years of age, but you have a role in their care, and you can't agree about who will look after them in the future.

You can become involved with Community Services NSW (this used to be called the 'Department of Community Services' or 'DoCS') and/or the NSW Children's Court dealing with the 'care and protection' of children if:

- You have children under 18 years of age in your care and someone thinks they are at risk of harm
- You think your children or other children in someone else's care are at risk of harm

The Commonwealth Parliament makes most laws about marriage and families in Australia. The Family Court of Australia and the Federal Magistrates' Court (called 'the Courts' in this section) are the two courts that deal with family law cases and disputes.

Care and protection law in Australia is made by the state and territory parliaments. In NSW, the NSW Children's Court makes care and protection orders. Sometimes the Family Court and the Children's Court can both be dealing at the same time with issues about your child or children in your care.

Both these Courts have arrangements so that, if this happens, the outcomes can be co-ordinated.

If you have a mental illness and find yourself in any in the situations described above involving children, then you may not be able to avoid the mental illness becoming an issue in your family law and/or care and protection matters.

This is because the primary consideration for the Courts and Community Services NSW in these situations is the best interests of the children involved. This means that the Courts or Community Services NSW can make decisions that may seem to be very unfair to you but have been made because they believe that these decisions are in the child's or the children's best interest.

Click [here](#) if you have a mental illness and want to learn about how this could affect your contact with Community Services NSW and the Children's Court in care and protection matters.

If you don't have any children under 18 years old or are not responsible for the care of children under 18 years old, the fact that you have a mental illness is not seen as relevant by the Courts when they are dealing with divorce and property settlements.

The Family Law Hotline on **1800 050 321*** is confidential telephone information service for people needing help to access the full range of information available on family law. If you need an interpreter when you call or want to get contact details for relevant services in your local area, call between 8.00 am and 8.00 pm Monday to Friday. Teletypewriter (TTY) and modem callers may call through the National Relay Service by dialling 1800 555 677* (then asking for 1800 050 321*).

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

7G.2: Divorce

Divorce is the official ending of a marriage. Divorce in Australia is called 'no fault' divorce. That means that to get a divorce you don't have to prove that your spouse has done something wrong, even if your spouse does not want a divorce. All you have to show is 'irretrievable breakdown' of your relationship and that there is no chance of reconciliation. To do this you have to make a sworn statement (in the form of an 'affidavit') that you have lived 'separately and apart' for 12 months and that there are no prospects of reconciliation.

Most divorce applications are not challenged for this reason, and most divorces don't require anything more than the formal written application and very short hearing in court.

The fact that one spouse or the other has or had a mental illness is not relevant to a divorce application (unless there are children of the marriage).

If there are children of the marriage, the Courts need to know what arrangements are being made for the care of those children. Because the Courts' primary concern must be the protection of the child or children's best interests, the mental health of either spouse can become relevant. In this situation, [the law about parenting arrangements after separation applies](#).

In NSW, legal aid funding or assistance is not available for divorce applications except in special circumstances. LawAccess has a number of resources available online that you might find useful. [Click here to go to the LawAccess webpage for information on divorce](#).

If you are not married, but have been in a long-term relationship that is breaking up, you may want to find out more about your legal situation. LawAccess has information available online, [click here to go to the LawAccess webpage for information on de facto relationships](#).

7G.3: Property disputes

If there is 'joint property' (not just real property like land or houses, but also household possessions and money) belonging to both you and your partner or

spouse, this will have to be divided up after you separate or when you divorce.

People in this situation usually agree to a 'property settlement' but if there is no agreement, then the property has to be divided, and the Courts then decides how this will be done.

[Because divorce in Australia is 'no fault' divorce](#) , then it is very unlikely that the mental health of one spouse could be relevant to a property dispute. It could be relevant that one spouse or partner was not able to contribute to the family income because they were unable to work because of a mental illness. This, if anything, is likely to make the Courts more sympathetic to the person with the mental illness.

If there isn't much joint property of value, most couples come to an informal agreement about how to split the property between them. The only reason Courts would be likely to overturn such an agreement would be if any children were left in a worse position in relation to their daily living arrangements because of the proposed property settlement.

In NSW, legal aid funding or assistance is not available for disputes over property and money except in special circumstances. Legal Aid NSW produces a ['Do-It-Yourself Plain English Guide to Property Settlement'](#).

If you are not married, but have been in a long-term relationship that is breaking up, you may want to find out more about what your legal rights and obligations are in relation to shared property. LawAccess has information available online, [click here to go to the LawAccess webpage for information on de facto relationships](#).

7G.4: Disputes about parenting and care of children

The next few pages are about disputes about parenting and family law.

If you need information about disputes about parenting, and Community Services NSW and perhaps the Children's Court are involved, click [here](#).

[A well as outlining the basic principles](#) that the Courts apply to parenting disputes, [there is information how mental illness might specifically affect these disputes](#).

[There is also information about parenting arrangements under family law](#) , and about [how the Courts deal with mental illness and parenting orders](#) .

[There is also information about legal representation for you](#) and [separate legal representation for children](#) and [where you can get information and support with parenting problems](#).

7G.4.1: Basic principles guiding Courts in parenting disputes

When the Courts make decisions about parenting or care of children, the law in Australia says that the decisions should be based on the principle that the welfare of the child or children concerned should be the 'paramount consideration'.

This does not mean that the Courts should ignore other considerations, just that other considerations should not lead to a situation that is not in the best interests of the child or children.

If you have a mental illness or your behaviour has been affected by mental illness, sometimes the Court will be told that the mental illness affects your ability to be an effective carer for children or that you should not be part of the parenting arrangements for a child, or perhaps that you should not be allowed to visit and/or have contact with your child or children.

The Courts dealing with family law in Australia have made it clear that **there is no legal presumption that a person is not capable of being a responsible parent, just because they have been diagnosed with mental illness.**

However, because the paramount consideration must be the 'best interests of the child', Courts can decide that a person's mental illness affects their parenting capacity and change the parenting arrangements because of this.

7G.4.2: When might a mental illness be relevant to a parenting issue

There are various situations where you could be faced with a dispute about the care of children, either:

- because you have been diagnosed with a mental illness; or
- because you are already in a dispute with someone about the care of children and your diagnosis of mental illness has become one of the issues in this dispute.

This could happen if you are separated from the other parent of your child or children and are:

- an involuntary patient under the *Mental Health Act 2007* (NSW) and because of this are temporarily unable to care for children normally in your care;
- a voluntary patient in a private or public psychiatric hospital or unit and therefore temporarily not able to care for children normally in your care;
- getting treatment for your mental illness in the community (including on a Community Treatment Order) and because of the treatment and/or your symptoms and/or the side effects of your medication, you are temporarily unable to adequately care for children normally in your care;
- on a Community Treatment Order or voluntarily receiving ongoing treatment for your mental illness in the community and someone thinks that the nature of your treatment or the symptoms of your mental illness affect your capacity to provide your children with appropriate care;
- not getting any treatment or getting only limited treatment for mental illness but someone thinks you have a mental illness, and because of the lack of treatment that they think you should be getting, thinks you are unable to provide adequate care to your children.

Another possibility is that your partner or spouse ends the relationship with you, possibly leaving your home and taking the children with them, while you are in hospital getting treatment for your mental illness.

In any of these situations, the other parent of your children or a parent of children you are caring for, could seek to change any existing informal arrangements about the care of the children or apply for a change to existing parenting orders or parenting agreements in the Family Court or Federal Magistrates Court.

This could result in you:

- losing your right to provide daily or shared care of a child or children (or having this right suspended);
- having an order made that gives you the right to have regular contact with the child or children (but this may be limited to supervised contact only).

If your partner, spouse or another person has changed the parenting arrangements for a child or children who you used to provide care for by removing them from your care when you were in hospital or acutely unwell, you may have to take the initiative to get them back. If you are not able to agree with the other people involved in the care of the child or children (this would usually be the other parent but could be a grandparent or other relative) about the future parenting arrangements, your only other option would be to apply for a parenting agreement in the Courts (or a variation to an existing agreement).

7G.4.3: Overview of parenting arrangements

The Family Court used to make orders for 'custody' and 'access' rights. These terms—'custody' and 'access'—are no longer used, and the Courts now make a single parenting order setting out the rights and obligations of both parents and sometimes others (for example, grandparents of the child or children).

A parenting order can be made either:

- By the Courts as a consent order based on an agreement between everyone involved in care of the child or children; or
- By the Courts after a hearing where everyone involved has a chance to present their views about what arrangements should be in place.

Parenting orders can deal with one or more of the following:

- Who the child or children will live with.
- How much time the child will spend with each parent or with other people such as grandparents.
- Who will be responsible for making decisions about the child or children's daily living and welfare.
- How the child or children will communicate with people he or she does not live with (that is by visits, by telephone, by e-mail, etc).
- Other aspects relating to the welfare of the child.

Under such orders the parents may have joint responsibility for most of the decisions about a child's welfare and the child or children may spend time living with each parent.

Even if either you or another person decides to apply to a court for a parenting order, the Court is likely to encourage everyone involved to try to agree on parenting arrangements through the Family Parenting Order Program.

[Click here for a factsheet on the program.](#)

Legal Aid NSW has a pamphlet setting out frequently asked questions and answers about family law, including information about parenting orders. [To access, please click here.](#)

[For more information on parenting orders, please click here to access the Family Law Court information sheet to on this topic.](#)

[See also the on-line factsheet 'Steps to getting a Parenting Order' from the National Council for Single Mothers and their Children.](#)

The Commonwealth Government has a website: [Australian Law Online that has information about all aspects of family law, click here to access.](#)

7G.4.4: How the Courts deal with mental illness and parenting orders

If someone says another person is unable to provide appropriate care for a child because of the symptoms or effects of a mental illness, then they may present expert evidence (usually from a psychiatrist but sometimes from a psychologist or other health professionals) to the Courts about the effects of mental illness on the welfare of the child. If this happens in a case involving you, you may also choose to get a report from another expert on these issues. Sometimes the Courts appoint an independent expert who can speak to everyone involved, including the children, and then prepare their independent expert report with recommendations for the Court.

It may be helpful to the Court if you can give it reports from your treating doctors and other health professionals. The decision about whether or not to provide this information sometimes creates a dilemma. Your files may include information that leads the Court to decide to limit your contact with your children. However, equally the files may provide the Court with evidence about your past or future treatment and current condition, which helps convince the Court to conclude that you are able to adequately care for your child or your children.

7G.4.5: Conditions on Parenting Orders

The Courts can place conditions on a parenting order including a condition that a person will be allowed to continue to exercise rights to care for or to visit their child as long as they agree to receive, for example, certain specified or unspecified psychiatric treatment.

7G.4.6: Changing a previous order

Changing a parenting order, even if your mental illness has greatly improved, can be difficult.

One reason for this is that the Courts are reluctant to change what has become a stable situation for a child, regardless of how unfair this may seem to a parent who has struggled to overcome mental illness in order to get their children back. This is because maintaining stability and certainty for a child, rather than allowing another significant change in their life, is seen as in their 'best interest'.

If you want to have a parenting order changed, you will need legal advice about how to go about this. For more about [legal advice and representation](#), go to the next page .

G.4.7: Legal representation

It is strongly recommended that you get legal advice and the help of a lawyer before you make any final decisions or make an application to the Court about parenting orders.

If you agree to a Parenting Order, the Courts will be reluctant to later change the terms of the order if this could be destabilising for the child or children involved. Therefore, it is essential that you are aware of all your options and aware of all legal consequences before you agree to a Parenting Order. The best source of such advice is a lawyer with experience in family law cases.

If you are not feeling well enough to deal with a court hearing and the necessary negotiations that go with a court hearing or you are only temporarily not able to care for your children, for example, because you are in hospital, then a lawyer can try to get the Court to delay any decision or try to convince the Court to only make temporary or short-term parenting orders. This will not necessarily happen unless you have a legal representative to explain your position.

Legal aid funding and/or legal help is available from Legal Aid NSW for some family law issues, including applying for, responding to and varying parenting orders.

[For all the Legal Aid NSW policies for family law click here.](#)

If a Legal Aid lawyer is already representing the other parent or someone else involved in the case, this will not prevent you from getting legal aid. In this situation, legal aid could be granted so that a private lawyer can represent you.

Many people apply for legal aid through a private lawyer. If you are seeking advice and representation about parenting orders, it is best to get a lawyer who is an accredited expert in family law. The [NSW Law Society can tell you who are accredited family law specialists in your area.](#)

7G.4.8: Separate representation for children

In Court proceedings about parenting orders, children can be separately legally represented so that their views and opinions about the parenting arrangements can be presented to the Court and their interests protected. Legal Aid NSW will usually pay for this legal representation.

[Click here for a Legal Aid NSW factsheet 'Independent Children's Lawyer – for parents'.](#)

7G.5: Information about and support with parenting

If you need information or think you need help or support with parenting, you might find the following organisations helpful:

- **Parent Line, NSW:** phone 132 055*. This is a 24-hour telephone advice and information service for parents of children living in New South Wales. It is a tollfree number anywhere in NSW.

Trained, professional counsellors with experience in helping families give support and assistance, provide information on relevant issues and services and on a wide range of parenting issues such as behaviour and emotional problems, discipline, adolescent issues, family relationships, sole parent issues, school problems, child care and juvenile justice.

Parent Line is available to help any parent in NSW, including parents from non-English speaking backgrounds, parents who are hearing impaired or Deaf, and parents who are Aboriginal or Torres Strait Islanders.

- **Tresillian Family Care Centres** provide support through a 24-hour Parents Help Line. Phone 02 9787 0855 or 1800 637 357* for country NSW callers.

Callers get on-the-spot advice from Tresillian's Child & Family Health professionals on any issue relating to caring for a baby or young child.

[Northern Sydney Central Coast Health has an online pamphlet called 'Tips for managing your parenting role during a mental health admission'.](#)

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) and to Local call numbers (numbers starting with 13 or 1300) are charged to the caller at the usual mobile rate.

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Part 7 Section H: Fines

[This part of the Manual discusses what fines are](#) and [what you can do if you have unpaid fines](#) including getting time to pay and the option of getting a ['Work and Development Order'](#), which allows you to 'pay' off a fine through voluntary work, participating in a course or training program, or in a treatment program.

7H.1: What is a fine?

A fine is a penalty for breaking the law (perhaps by committing a criminal offence or breaching a regulation, such as the regulations governing what you can

and can't do on railway property). A fine is the penalty of having to pay money rather than having to go to jail, promise to be of good behaviour (under a bond) or do unpaid community work.

Fines can be the penalty set by a court or be the penalty set through a 'penalty notice' or 'infringement notice' (where the penalty is imposed 'on the spot') that is issued by an authorised officer (including some local government employees and some railway employees, for example). Where a fine is imposed on you through a penalty or infringement notice, you can choose either to pay the amount of the fine, or not to pay it and go to court to say why you shouldn't have to pay the fine.

7H.2: What you can do if you get fined

Don't ignore fines: they don't go away. If you ignore a fine, you may end up in more trouble and it is very likely to cost you more!

If you think the fine should not have been given to you, you can challenge it.

The first way to challenge a fine is to write to or contact the organisation that issued it, for example, RailCorp or the local council. If you are going to do this you should get onto it quickly because delays might result in the fine being taken to the next stage and you facing a bigger penalty.

The second way to challenge a fine is by going to court. If you want to challenge the fine in court you need to indicate this on the penalty notice. There is information (usually on the back of the penalty notice) about what to do if you want to challenge the fine in court.

If you can't afford to pay a court-imposed fine all at once, but are willing and able to pay it off in smaller amounts you can ask for time to pay. If you have been given time to pay a fine by a Local Court but still can't pay on time, you can ask for an extension of the time to pay; [click here for more details](#).

If you don't ask for further time to pay and then don't pay the fine within the time allowed, or don't make any instalment payments required, the fine will be referred to the State Debt Recovery Office (SDRO) for further action.

The SDRO is the NSW Government office that collects outstanding fines of all kinds, including fines for transport fare evasion, and [court-imposed fines](#).

When you get a fine, the SDRO will first send you what is called a penalty notice. If you don't reply or don't pay the fine the SDRO will send a reminder. If you ignore this reminder notice, extra financial penalties will then be added. If you still don't pay the fine, the penalties increase and it can also lead to the suspension of your driver's licence, cancellation of your car registration, and in some cases your property may be taken!

There are options for you if you can't afford to pay a fine, including an overdue fine. To find out more, click [here](#).

7H.2.1: What are your options if you can't afford to pay a fine?

If you can't pay the full amount of the fine or if you have some other problems (such as medical or serious financial problems), there are a few options you have:

- If you can't afford to pay the fine, you can apply to the State Debt Recovery Office (SDRO) for time to pay. If your application is approved this means that the SDRO will let you pay-off your fine(s) in instalments that you can afford. If you want to apply for time to pay, you can usually do this by phone or by completing the [Payment by instalments – Individuals form](#). To apply by phone to pay by instalments, contact the SDRO between 8.00 am and 5.30 pm Monday to Friday on 1300 655 805* or (02) 6354 7255 for teletypewriter (TTY) users.
- If you have serious medical, financial or other hardship problems, or you have a disability, or were homeless or mentally unwell at the time that you got the fine (s), you may be able to have your fine written off. You can apply for the fine(s) to be written off once you have been sent an enforcement order for the fine(s) by the SDRO. You usually have to get medical reports and other information about your situation to support your application.

To apply for your fine(s) to be written off, you need to write a letter to the Director of the SDRO. Your letter must contain: your full name, date of birth, address and licence number (if you have one); the enforcement order number(s); the grounds for your application, that is, financial, medical or domestic problems, or a combination of these; and your current financial situation. You also need to fill out a Statement of Financial Circumstances form, showing: your income, all the things you own and your current debts. This form helps SDRO assess your regular living expenses. If you are unemployed, or not working full time, you need to provide your social security details. You also need to explain why you think your situation will not improve. To access the Statement of Financial Circumstances application, [click here and follow the links](#). You then send your letter and the completed form (and any supporting documents) to the Director of the SDRO, PO Box 786, Strawberry Hills NSW 2012.

For more about applying to have a fine written off, [click here](#).

- If you apply to have your fines written off, and the Director of the SDRO says no, you can apply to the **Hardship Review Board** for a review the decision. [Click here to access the Application for Review of a State Debt recovery Office Decision form](#). For more about applying to the Hardship Review Board, [click here](#).
- The SDRO is testing another way for people with fines to deal with them, through **Work and Development Orders**. Work and Development Orders allow certain people, including people with mental illness, who have unpaid fines to pay off their debt through unpaid work or through doing courses or treatment programs. Click [here](#) to find out more .

7H.2.2: To talk to a lawyer

Dealing with fines on your own can be tricky! [If you would like some help working out your options, it is a good idea to get in contact with a lawyer](#).

For initial telephone advice or information where you can get free legal advice, you can call [LawAccess NSW on 1300 888 529*](#).

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) and to Local call numbers (numbers starting with 13 or 1300) are charged to the caller at the usual mobile rate.

7H.2.3: Work and Development Orders

The Work and Development Order scheme has been set up to allow people who face particular disadvantages to deal with unpaid fines without having to

pay them off with money.

Not everyone is able to deal with their fines in this way. In order to be eligible for the scheme you must:

- have a mental illness, an intellectual disability or a cognitive impairment; or
- be homeless; or
- be experiencing acute economic hardship.

If you fit into one of these categories you can apply to the SDRO to do a **Work And Development Order**. Your application must be supported by an organisation that is approved by the SDRO or by a qualified health professional (such as a doctor or a psychologist).

To complete a Work and Development Order, you can:

- do unpaid work for an approved organisation
- receive medical or mental health treatment
- do educational, vocational or life skills courses
- attend financial or other counselling
- receive drug or alcohol treatment
- participate in a mentoring program (if you are under 25)

Contact the SDRO on **1300 478 879*** to ask for an application form and to find your closest approved organisation that can help you to complete and lodge the application or [click here to access a Work Development Order form together with information about Work Development Orders](#).

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Chapter 8 - Specific Consumers and their Needs

Part 8 Section A: Specific Consumers and their needs

Overview

In Australia, everyone has the same legal rights, for example, the right to a fair trial and equality before the law. This is also true with mental health rights. It means that no matter what your background is, such as your gender, culture, ethnicity or religious beliefs, you have the same rights as any other person in Australia to get mental health care and services.

Mental health law should apply equally to everyone in NSW. However, the reality is that although the law itself is applied equally, disadvantage or cultural differences often mean that the application of mental health law produces different outcomes for members of different groups in society. One example is that people with a relatively high income or from a family with a lot of financial resources can get private mental health care. This, in turn, means they have a much greater chance of finding a 'less restrictive alternative' to involuntary public hospitalisation when appearing before a mental health inquiry of the Mental Health Review Tribunal.

People from disadvantaged backgrounds may have difficulty getting the mental health services that should be available to them. This may be because of lack of money, lack of awareness of what services are available, limited reading and writing skills and English language skills, lack of physical access to services for people with mobility disability, or lack of easily understood information for people with intellectual or cognitive disability. It may be also because of stereotyping and/or prejudice against members of particular groups or people with mental illness generally.

These potential differences in outcomes have to some extent been recognised by governments and those who provide mental health services. This recognition has led to policy changes and, in some cases, changes to the law.

[The most obvious of these changes is anti-discrimination law that prohibits discrimination when providing services \(including mental health services\).](#)

This part of the Manual looks at the particular difficulties faced by members of particular groups in both accessing and engaging with mental health services in NSW and suggests possible remedies, rights and services that may help stop these people from having negative experiences. You can read about issues that are particularly relevant to people with mental illness who:

- [are Aboriginal and/or Torres Strait Islanders](#)
- [are from a non-English-speaking background](#)
- [are children or young people](#)
- [have or are caring for children](#)
- [have drug and alcohol problems](#)
- [have an intellectual disability and/or an acquired brain injury.](#)

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Part 8 Section B: Aboriginal and Torres Strait Islanders and mental health issues

Aboriginal and Torres Strait Islander people, like other Australians, have community and family members who have been diagnosed with mental illness.

Aboriginal and Torres Strait Islander people are generally disadvantaged in Australian society. This is reflected in the level of poverty in Aboriginal and Torres Strait Islander communities and the lack of access to basic services, including health services, for Australia's indigenous population.

This section highlights those services that are available to Aboriginal and Torres Strait Islander people that try to counter the imbalance of past injustices by providing mental health services specific to Aboriginal and Torres Strait Islander people.

You will find information on:

- [Racial discrimination](#)
- [Why it is important to consider culture in relation to mental health and mental illness](#)
- [Health and support services for Aboriginal and Torres Strait Islander people with mental illness](#)
- [Stolen Generation issues: tracking down lost relatives](#)

8B.1: Racial discrimination and aboriginals and torres strait islanders

If, when you are trying to get services (including health services), you are discriminated against, you can use anti-discrimination law to complain about it, possibly to get compensation and stop it happening again.

If the discrimination is because of your mental illness, click [here](#) to find out more about what you can do.

If the discrimination is because you are Aboriginal or Torres Strait Islander, this is called racial discrimination.

There are two laws that apply to racial discrimination that happens in NSW:

- The *Racial Discrimination Act 1977* (Cth) that applies to discrimination that happens anywhere in Australia, including NSW; and
- The *Anti-Discrimination Act 1977* (NSW) that applies to discrimination that happens in NSW.

These laws make it unlawful to discriminate against a person because of their race in a range of areas of life, such as work, service provision, housing, and education.

There are similar laws in each state and territory, some are called anti-discrimination laws, others are called equal opportunity laws. You can find out more about these laws through the links to state and territory bodies under the heading 'State and Territory Anti-discrimination and Equal Opportunity Agencies' on the links page on the [Australian Human Rights Commission's website](#).

In NSW, the [Anti-Discrimination Board \(ADB\)](#) [investigates racial discrimination complaints made under the *Anti-Discrimination Act 1977* (NSW), and firstly tries to resolve such complaints about discrimination by agreement. If there is no agreement then the result is decided independently by the Administrative Decisions Tribunal.

The Anti-Discrimination Board has Aboriginal and Torres Strait Islander staff members who deal with education, enquiries, complaints and conciliations involving Aboriginal and Torres Strait Islander people. More information is available on the [Anti-Discrimination Board's website](#) or through the Anti-Discrimination Board's enquiries line on 1800 670 812*.

The [Australian Human Rights Commission](#) is responsible for dealing with complaints of discrimination under the *Racial Discrimination Act 1977* (Cth) and has a specific Race Discrimination unit and the Aboriginal and Torres Strait Islander Social Justice unit.

The Federal Court or Federal Magistrates Court deal with complaints of discrimination that can't be resolved through the Australian Human Rights Commission.

[Click here for information about racial discrimination from the Australian Human Rights Commission](#) and from the [Anti-Discrimination Board](#).

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8B.2: Why is it important to consider culture in relation to Aboriginal and Torres Strait Islander mental health?

For all peoples, no matter what culture or race, mental health/healing and wellbeing are the result of a range of factors including social setting, environment and developmental factors. The way mental illness is expressed by a person—their symptoms and behaviours—can also be affected by these factors.

For Aboriginal and Torres Strait Islander people, there are high levels of stress and anxiety resulting from the trauma and grief caused by dispossession and the removal of children. High levels of imprisonment in male and female, juvenile and adult correctional facilities is evidence of the poor health, injustice and oppression, racism and exclusion still alive in Australia's society.

Current statistics indicate there are much higher levels of physical and mental illness among the Aboriginal and Torres Strait Islander population than in the general community across Australia.

Providing effective services to Aboriginal and Torres Strait Islander people requires an understanding of 'cultural appropriateness'. This is an idea that extends from how people live and act to the provision of culturally appropriate programs and services. What are 'culturally appropriate services' covers a wide range of therapies, programs and models.

The key issue in any program that claims to be culturally appropriate is that there is an inclusion of Aboriginal cultural ways or realities.

A culturally appropriate way of working with Aboriginal people requires the recognition of Aboriginal culture, and involvement of Aboriginal people.

There is no substitute for the active involvement of Aboriginal and Torres Strait Islander people in both the management and service delivery of mental health services, as well as the development of programs and services.

8B.3: Mental health services for Aboriginal and Torres Strait Islander people

There are specific services available to help Aboriginal and Torres Strait Islander people with mental illness in NSW:

- [Aboriginal Mental Health Workers](#)
- [Indigenous Disability Advocacy Service](#)
- [Aboriginal Disability Network](#)

To find out generally about health services for Aboriginal and Torres Strait Islander people in NSW go to the [Aboriginal Health and Medical Research Council of NSW website](#).

8B.3.1: Aboriginal Mental Health Workers in NSW

The NSW Government's response to the mental health needs of Aboriginal people includes having specialist Aboriginal Mental Health Workers (including specialist child and adolescent workers) employed in Community Mental Health Services and Aboriginal Medical Services.

If you want to locate an Aboriginal Mental Health Worker in your area contact your local Community Mental Health Service or your local Aboriginal Medical Service.

[Click here to find your local Community Mental Health Service](#).

[Click here to find your local Aboriginal Medical Service.](#)

[Click here to read the NSW Government's NSW Aboriginal Mental Health and Well Being Policy.](#)

8B.3.2: Indigenous Disability Advocacy Service

The [Indigenous Disability Advocacy Service](#) gives advocacy support to Aboriginal people with disability, their families and carers living in western Sydney and other area in NSW. The service advocates for Aboriginal and Torres Strait Islander people with disability and their family members and carers in any part of their life where they are experiencing discrimination or unfair treatment.

Phone: (02) 9687 7688
E-mail: idas@idas.org.au
Address: Suite 4, 2-6 Kendal Street
PARRAMATTA NSW 2150
Website: <http://www.idas.org.au/>

8B.3.3: Aboriginal Disability Network NSW

The [Aboriginal Disability Network NSW](#) (ADN) brings together Aboriginal and Torres Strait Islander people with disability (including people with mental illness) to tell their stories, share their experiences and provide each other with support. The ADN is not currently funded to provide advocacy, however it will refer people to appropriate advocacy services.

Phone: (02) 9319 1422.
Teletypewriter (TTY): 02 9318 2138
TTY Freecall: 1800 422 015*
E-mail: adnsw@pwd.org.au
Postal address: PO Box 47
STRAWBERRY HILLS NSW 2012
Website: <http://www.pwd.org.au/adnsw/contact.html>

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

8B.4: Stolen Generation issues: counselling and tracking down lost relatives

The [Bringing them home](#) report highlighted the tragedy of the Stolen Generation of Aboriginal and Torres Strait Islander children forcibly removed from their families.

Some of the children involved were adopted; others were made wards of the State. Many past wards of the State or adopted children want to find their birth parents. Many birth parents who had their children removed or gave up their children want to make contact with those children.

[Link Up NSW](#) helps Aboriginal and Torres Strait Islander people find lost relatives. Link Up provides counselling, research and support services for Aboriginal and Torres Strait Islander people who are trying to find lost relatives or have made contact with lost relatives.

Link Up NSW has a webpage about where to find information about lost members of your family if you are an Aboriginal or Torres Strait Islander, [click here to go to the webpage](#).

Link Up can be contacted at:
Freecall: 1800 624 332*
Phone: (02) 4759 1911
Fax: (02) 4759 2607
E-mail: linkup@nsw.link-up.org.au
Postal address: PO Box 93
LAWSON NSW 2783
Street address: 5 Wallis Street
LAWSON NSW
Website: <http://www.linkupnsw.org.au/>

The Commonwealth Department of Health and Ageing pays for Bringing Them Home Counsellors for families of members of the Stolen Generation.

The Bringing Them Home Counsellor program pays for counsellors to provide counselling to individuals and families, and related services to communities affected by past practices around the forced removal of children from Aboriginal families.

[Click here for more information about the Bringing Them Home program.](#)

There is a range of other services that can help you to find relatives with whom you have lost contact because of their adoption or removal as wards. [Click here](#) to find out more.

You can also get information about adoptions. To find out more about how to do this, [click here](#).

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

8B.4.1: Services that help to find family members

As well as [Link Up](#), the Salvation Army has a Special Search Service that helps to find lost relatives who were either adopted or wards of the State. [Click](#)

[here for more information about the Salvation Army's Special Search Service.](#)

The NSW Benevolent Society has a Post Adoption Resource Centre that provides information, counseling and a range of other services to anyone affected by adoption in New South Wales and the Australian Capital Territory. [Click here to go to the website of the Benevolent Society's Post Adoption Resource Centre.](#)

These services are free. There are, however, businesses that charge money to try to find lost relatives. As with other services, you should always get a quote for the likely cost before you agree to use such a service.

To find out how to get information about past adoptions and wards of the State, click [here](#).

8B.4.2: Information about past adoptions and wards of the State

In the past, information about adoptions was not available because of privacy concerns. Now this information is available to adults who were adopted (18 years and over) and the birth parents of adults who were adopted.

This information is available from the **Adoption Information Unit, Community Services NSW**:

Phone: 1300 799 023*

Fax: (02) 9716 3400

E-mail: adoption.information@community.nsw.gov.au

Street address: 4-6 Cavill Avenue

ASHFIELD NSW

Postal address: Locked Bag 4028

ASHFIELD NSW 2131

Website: http://www.community.nsw.gov.au/parents_carers_and_families/fostering_and_adoption/adoption.html

Former wards of the State are entitled to access documents about their period in care at no cost from Community Services NSW. If you live in NSW, this can be done through your nearest Community Services Centre. [Click here to find your nearest Community Services Centre.](#)

If you live outside NSW, you need to write to the **Freedom of Information Unit, Community Services NSW** to ask for the records:

Phone: (02) 9716 2662

Fax: (02) 9716 3400

Street address: 4-6 Cavill Ave

ASHFIELD NSW

Postal address: Locked Bag 4028

ASHFIELD NSW 2131

[To find out more about how Community Services NSW can help you if you are a former ward of the State, click here.](#)

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Part 8 Section C : Ethnicity and mental health issues

Sometimes, differences in culture and language can create difficulties in getting appropriate mental health care, support and services. In NSW, there are a number of policies and programs in place to overcome these kinds of barriers. There are also a number of services available to assist people from culturally and linguistically diverse (CALD) backgrounds to access the mental health care and support they need.

The purpose of this section is to give you information about those policies, programs and services in NSW.

In NSW, there are specific health policies and programs to deal with the needs of asylum seekers and refugees; [information about these policies and programs is also provided in this section](#).

In this section of the Manual you will find information about:

- [The National Standards for Mental Health Services and ethnicity](#)
- [Multicultural mental health policy in NSW](#)
- [Mental health services specifically for CALD communities](#)
- [Health and support services for asylum seekers and refugees](#)
- [Interpreting and translation services](#)

The Mental Health Association of NSW has a factsheet on 'Migrant mental health care in NSW' that you might also find useful, [click here to read the](#)

[factsheet](#).

8C.1: The National Standards for Mental Health Services and Ethnicity

Standard 7 in the [National Standards for Mental Health Services](#) deals with cultural awareness in the mental health sector. It outlines the standards that mental health services should meet to make sure their services are non-discriminatory and are sensitive to the social and cultural values of the person with mental illness and their family and community. Standard 7 deals with a range of issues, including:

- providing culturally sensitive service delivery;
- employing people with relevant experiences;
- making sure that staff members are appropriately trained with an understanding of the relevant social, cultural and historical features of the communities they work with; and
- monitoring and addressing issues of social and cultural prejudice among staff members.

To read Standard 7 of the *National Standards for Mental Health Services*, [click here](#).

8C.2: Multicultural Mental Health Policy in NSW

NSW Health has a *Multicultural Mental Health Plan 2008–2012* that sets out the directions and principles for how mental health services in NSW should develop and operate to better meet the needs of people from culturally and linguistically diverse (CALD) communities.

The NSW Government's key priorities include:

- an emphasis on education, prevention and early intervention
- delivering culturally inclusive and responsive mental health services
- enhancing cultural competencies in mental health service delivery

The Plan recognises the rights of CALD communities to participate in service planning, decision-making, delivery and evaluation. The Plan also recognises that members of CALD communities have very distinct experiences and thus distinct mental health needs, and that these experiences and their related needs should be taken into account by the mental health sector.

The Plan focuses on the needs of:

- people from CALD communities who are at risk of developing mental health problems
- people from CALD communities who experience mental health problems
- families and carers of people in CALD communities with mental health problems
- services that provide mental health services to members of CALD communities.

[Click here for the link to the Multicultural Mental Health Plan 2008–2012](#).

8C.3: Mental health services specifically for members of culturally and linguistically diverse communities

8C.3.1: Diversity Health Institute (DHI)

The Diversity Health Institute provides a range of specialised mental health clinical assessment and services to people from Culturally and Linguistically Diverse (CALD) communities. These services are listed below, click on the service name to go to the website:

[Transcultural Mental Health Centre](#) provides a range of information and services for people with mental illness from CALD backgrounds, their carers and communities

[Co-Exist NSW: Diversity Health Comorbidity Services](#) for people from CALD backgrounds who are living with two or more mental health conditions, or a mental health condition and a substance abuse or problem gambling condition

[Multi-cultural Problem Gambling Service for NSW](#) that helps problem gamblers from CALD communities living in NSW and their families by providing quality and accessible counselling, treatment and support services.

To contact any of the above three services by phone:

Phone: 02 9840 3767 or

02 9840 3899

Freecall: 1800 648 911*

The Diversity Health Institute website also has a range of resources in community languages. In particular, the website has practical guides for maintaining good mental health for individuals and families. For more information about Diversity Health Institute and to access the online resources, [click here](#).

8C.3.2: Multicultural Mental Health Australia

Multicultural Mental Health Australia is a national organisation focused on mental health and suicide prevention for Australians from culturally and linguistically diverse backgrounds.

[To find out more about Multicultural Mental Health Australia, click here to go to the MMHA website](#).

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8C.4: Asylum seekers and refugees and the health system

Asylum seekers are people in Australia who have applied to the Australian Government for recognition as a refugee and are waiting for a decision.

The application to become a refugee is tested against the criteria set out in the 1951 *Convention relating to the Status of Refugees* and 1967 *Protocol Relating to the Status of Refugees*. Asylum seekers become refugees if their applications are approved.

The assessment process may take several years, and during this waiting period, the Australian Government may give some help to the asylum seeker, such as giving them the right to work in Australia and a Medicare Card. Most refugees should be given a Medicare Card, which means that if you are a refugee, you should have access to basic health services available to Australian citizens.

If you are an asylum seeker or refugee and you have been given a Medicare Card, then you should read [the section on Medicare in this Manual for information about your rights to get health services](#).

If you are a refugee and need help to get health or medical care, you can contact the [NSW Refugee Health Service](#). The service is operated by NSW Health. It runs a clinic one day a week at a number of places in NSW and it provides health services and referrals for refugees. You need to make an appointment, and you should let them know when you make the appointment if you need to have an interpreter. To make an appointment, phone: 02 8778 0770 (Monday to Friday) or [click here to go to the NSW Refugee Health Service website for more information](#).

There are ways to get health or medical care services if you are an asylum seeker in NSW and are not eligible for Medicare:

- [Asylum Seekers Assistance Scheme \(ASAS\)](#)
- [NSW Health – health services fees waiver](#)

There are also organisations that provide specialist services and support to asylum seekers and refugees. To find out more, click [here](#).

8C.4.1: Asylum Seekers Assistance Scheme (ASAS)

Some asylum seekers who are not eligible for Medicare may be able to get help under the Asylum Seekers Assistance Scheme (ASAS). This is an Australian Government scheme run by the Australian Red Cross. It mainly helps pay for the living and housing costs of the eligible people, but can sometimes also pay health care costs.

If you can get help from the Asylum Seekers Assistance Scheme and you need to go to a public health service, including a mental health service, then you should ask the Australian Red Cross to give you a letter with the following details in it:

- it should be addressed to the particular health service you need to go to;
- it should identify you, the patient;
- it should also identify the medical condition for which you need treatment.

Services that are not listed in the letter will not be provided unless Australian Red Cross has approved them.

The bill for the health care services will be sent to Australian Red Cross and you will not need to pay.

If you need medical help in an emergency, and you don't have a letter from Australian Red Cross, you should let the medical staff at the service that you are eligible for ASAS, so that they can contact Australian Red Cross for you. They can't refuse you emergency medical care.

[You can find out more about ASAS from Australian Red Cross's website by clicking here.](#)

If you want to access ASAS, you need to contact the Migration Support Program of the **Australian Red Cross**.

Phone: (02) 9229 4266

Street address: 159 Clarence Street

SYDNEY NSW

E-mail: nswinfo@redcross.org.au.

[For ASAS contacts in other states and territories, click here.](#)

8C.4.2: NSW Health: health services fee waiver

If you are an asylum seeker and you are **not** eligible for Medicare or the Asylum Seekers Assistance Scheme, NSW Health has a policy that means you can get certain health services for free.

This policy applies to the following services:

- emergency care for acute medical and surgical conditions
- elective surgery for some conditions
- outpatient care and ambulatory care for people with acute or chronic health conditions
- maternity services
- mental health services, including inpatient and community-based services
- emergency and some urgent dental care

If you think you are eligible, you should tell the hospital or medical staff before you get the medical service. You can ask for a letter that details your status from the Department of Immigration and Citizenship or from a support group such as [Australian Red Cross or the Asylum Seekers Centre](#), if you don't have other documents. Otherwise you may get a bill for the cost of your treatment and hospitalisation. If you do get a bill, and you think you are entitled to the fee waiver, you should immediately give proof of your status to the hospital or medical service provider.

8C.4.3: Services for Asylum Seekers in NSW

There are two other services that focus on health care for asylum seekers and refugees in NSW:

- The [Asylum Seekers Centre of NSW](#) offers a range of health care programs including on-site health care and referrals to free health and mental health services. The

Centre also gives other non-health related support to asylum seekers.

[For more information on what the Asylum Seekers Centre of NSW can do for you, click here to go to the Asylum Seekers Centre website.](#)

You can also call Asylum Seekers Centre of NSW to make an appointment to see a caseworker at the Centre.

Phone: 02 9361 5606
(Open Monday to Thursday between 9.00 am and 5.00 pm)

- The NSW [Service for the Treatment and Rehabilitation of Torture and Trauma Survivors \(STARTTS\)](#) helps refugees and asylum-seekers living in NSW to recover from their experience and to settle in Australia. It provides mental health services, personal support programs and training.

For more information about STARTTS, [click here to go to the STARTTS website.](#)

To make an appointment:

Phone: (02) 9794 1900
E-mail: starts@sswahs.nsw.gov.au.

8C.5: Interpreting and translation services

When you are getting health services, including mental health services, you have a right to have the services and its information given to you in a way that you can understand. This means that if you cannot understand English very well, then you have a right to have an interpreter so that the information is given to you in a language you can understand. If the service does not have a staff member who is fluent in your language, then the service should do their best to help you get an interpreting and translation service at no cost to you.

There are two main interpreting and translation services available in NSW:

[The Language Services Division of the Community Relations Commission](#) provides on-site, face-to-face interpreting. You must make a booking to get an interpreter and can do this by telephone or by e-mail. Phone: 1300 651 500* and e-mail: languageservices@crc.nsw.gov.au

The Translating and Interpreting Service (TIS) is a national service provided by the Department of Immigration and Citizenship. TIS provides a telephone interpreting service. You can get an interpreter over the phone by calling 131 450*.

TIS also provides on-site, face-to-face interpreting, but you must make a booking for this and the booking is usually made by the service you are getting help from. Sometimes, the service is free. [For more information about TIS and how to use it, click here to visit the website.](#)

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Part 8 Section D : People with mental illness who have family responsibilities

This section is about mental illness and family law, particularly its impact on people with mental illness who have family responsibilities and may be affected by concerns about their parenting capacity due to their illness.

If you are separated from your spouse or partner and you disagree about how your children should be cared for, these disagreements are usually resolved through family law.

However, if another person or organisation is worried about how you are looking after your children who are under 18 years of age, then this is likely to be dealt with by Community Services NSW and possibly involve an order from the Children's Court.

In this section, you can find out more about:

- [Family law and parenting orders and what might happen with those orders if one of the parents is diagnosed with a mental illness](#)
- [How the care and protection system works in NSW, including the role of the Community Services NSW, alternative care arrangements, such as foster care, and how your mental illness might affect the process](#)
- [How to get help with caring for your children](#)

8D.1: The child care and protection system in NSW

Many people with mental illness who have children in their care are worried about losing those children through the children protection system.

The child protection system is set up under NSW laws and the two main organisations that are involved are Community Services NSW and the Children's Court of NSW.

Community Services NSW is responsible for responding to concerns about risk of serious harm to children and young people. The Children's Court is responsible for making formal orders for care of children.

In this section on the care and protection system in NSW, you can find out more about:

- [When services providers have to report concerns about children](#)
- [Involvement of Community Services NSW if you have children in your care](#)
- [What Community Services NSW can do if it decides that there is a risk of serious harm to your child or children](#)
- [Temporary care arrangements](#)
- [Parental Responsibility Contracts](#)
- [What happens if Community Services NSW wants your children removed from your care](#)
- [Foster care](#)
- [What risks of serious harm Community Services NSW and the Children's Court deal with](#)

8D.1.1: When services providers have to report concerns about children

Usually when you see a health care professional or ask for advice from a professional or service provider about yourself or your children, your conversation with them is confidential and they would be acting unethically if they were to tell anyone else about what was said or what the conversation was about.

In NSW, there is an exception to this rule that requires certain people in authority and certain health care professionals, including doctors, nurses and psychologists, to report confidential information if it reveals a risk of serious harm to a child or children.

Many people who provide professional, law enforcement, educational and welfare services have to report to Community Services NSW if they have a reasonable basis for suspecting that a child is either being abused or neglected. This includes local doctors, psychiatrists, nurses and teachers.

This means that if someone is worried that your mental illness or its treatment might cause a risk of serious harm to children in your care they may think they have to report this to Community Services NSW.

If Community Services NSW gets a report, it must make a risk assessment, usually beginning with talking to the parents or carers and the children who are the subject of the report. For more about what kind of serious harm Community Services NSW will deal with, click [here](#). For more about what Community Services NSW will do if it decides there is a risk of serious harm, click [here](#).

Community Services NSW has a factsheet, 'What happens if a report is made about me or a child in care'. [Click here to read the factsheet](#).

8D.1.2: Involvement of Community Services NSW if you have children in your care

There are several situations where Community Services NSW might get involved if you have children in your care and have a mental illness:

- [If you have a stay in hospital](#)
- [If you are diagnosed with a mental illness or are receiving treatment for a mental illness](#)
- [If Community Services NSW decides \(following a report or otherwise\) that there is a risk of serious harm to your child or children](#), it can take action.

For information about what Community Services NSW can do, click [here](#).

8D.1.3: What Community Services NSW can do if it decides there is a risk of serious harm to your child or children

[If Community Services NSW decides that the children in your care are at risk of serious harm](#), it can:

- help you get support to care for your child or children
- [put the child or children into temporary care](#)
- talk to you and other members of your family and develop a care plan
- put together a [Parental Responsibility Contract](#) with you and others who have responsibility for the child or children (Parental Responsibility Contracts have to be approved and registered by the Children's Court)
- [remove your children from your care](#)

8D.1.4: Temporary care arrangements

A Temporary Care Arrangement gives Community Service NSW the right to decide where the child or children should live and to make decisions about the day-to-day care of the child, including about health care, behaviour and activities.

Temporary care arrangements can only be put in place if, as a parent, you agree to the arrangement. Such an arrangement can only last three months, but can be extended—again only with your consent—for another three months. Temporary Care arrangements must include a 'restoration plan', which is a plan for how your child or children can be returned to your care.

If you are thinking about agreeing to a temporary care arrangement or care plan with Community Services NSW, [Legal Aid NSW](#) can give you legal advice before or after you make the proposed care arrangements.

Community Services NSW has webpage that explains what it will do to respond to a report that a child or children is at risk of serious harm.

[Click here to go to the Community Services NSW webpage](#).

[Click here for the Legal Aid NSW page on care and protection matters](#).

[For more information about restoration plans, click here to go to the ACWA factsheet 'Getting my children back home: information on restoration](#)

8D.1.5: Parental Responsibility Contracts

A Parental Responsibility Contract (PRC) is a written agreement between you and Community Services NSW if you are one of the people responsible for a child or children. The Contract is for six months but only one Parental Responsibility Contract can be made in any 12-month period.

A Parental Responsibility Contract has to be registered with the Children's Court.

A Parental Responsibility Contract can include conditions that the parent has to do certain things, such as:

- get counselling
- go to courses to improve their parenting skills
- have treatment for drug, alcohol or other substance abuse
- have drug tests

The law does not limit what can be in a Parental Responsibility Contract. Therefore, it is possible that a Parental Responsibility Contract could require that a parent continue or start treatment for a mental illness.

If you, as a parent who is subject to a Parental Responsibility Contract, don't obey the conditions, then you could be made to go back to the Children's Court for the court to deal with it as a breach of the Parental Responsibility Contract.

If the Court finds that there has been a breach and your children are still assessed as being at risk of serious harm and therefore in need of care and protection, there is a strong possibility that the children will be removed from your care.

For these reasons, you should get [legal advice before you sign a Parental Responsibility Contract](#).

8D.1.6: What happens if Community Services NSW wants to have your children removed from your care?

If Community Services NSW wants to change care arrangements or remove your child or children from your care, it has to apply to the Children's Court. If this is happening, you should get legal advice, and if possible, legal representation in the Children's Court.

[Legal Aid NSW](#) may give you legal representation in care and control matters. Representation in these cases is subject to a means and merits tests and you may be asked to pay part of the cost to Legal Aid NSW. The Legal Aid NSW guidelines say that if a parent has mental illness, this will be taken into account in deciding whether or not it will agree to provide legal representation.

[Click here to download various factsheets for parents about care and protection matters](#), including:

- Factsheet about going to the Children's Court in care and protection matters, 'What happens in a care and protection hearing at the Children's Court'
- Factsheet about restoration, 'Getting my children back home - information for parents about "restoration"'

One option that Community Services NSW may consider is [putting your child into foster care](#).

8D.1.7: Foster care

Foster care is care for children and young people who can't live with their own families.

Foster carers take on the responsibilities of a parent for a period of time. They are usually but not always, a two-parent family, often with their own children.

Most children go into foster care because Community Services NSW (and sometimes the Children's Court) believes they are at risk of serious harm or neglect or because their parent or their carer needs a break.

Foster care can be for a short time or long time: for one or two nights, a few weeks or months, or even years.

[Click here to find out more about your rights and how foster care works from a Community Services NSW factsheet](#).

[See also Community Services NSW factsheet 'Is your child in care?'](#)

8D.1.8: What risks of serious harm do Community Services NSW and the Children's Court deal with?

Community Services NSW will get involved if:

- a child or young person's basic physical or psychological needs are not being met or are at risk of not being met
- the parents or other caregivers have not arranged and can't or won't arrange for the child or young person to get medical care that they need
- the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated (this does not necessarily mean abuse by you, it could be abuse by someone else)
- the child or young person is living in a home where there has been domestic violence and, as a result, the child or young person is at risk of serious physical or psychological harm
- a parent or other caregiver has caused the child or young person to suffer or be at risk of suffering serious psychological harm

Community Services NSW can also get involved if it considers there is a risk of serious harm to an unborn child.

Community Services NSW can only change parenting arrangements and put your child in someone else's care for a short time. If Community Services NSW wants to permanently change these arrangements, it has to apply to the Children's Court.

A magistrate is in charge of the Children's Court process. There is a separate Children's Courts in Sydney. In rural and regional areas, the Children's Court takes place as special sittings of the Local Court.

The Children's Court can make the following orders:

- Allow the previous parenting arrangement to continue, usually with a restoration plan.
- Make a temporary order putting your child or children in someone else's care (usually foster care).
- Make a permanent order putting your child or children in someone else's care (usually foster care).
- Make a contact order about who can see and/or contact your child, including when and how.

The Association of Children's Welfare Agencies have a fact sheet called 'Information for parents attending care and protection hearings'. [To download the factsheet from the website, click here.](#)

8D.2: Getting help with caring for your children

While the Community Services NSW can put in place alternative care arrangements, it can also help you to look after your children. For more about how Community Services NSW can help, click [here](#).

There are other services that can help you with caring for children if you are finding it hard. For more about these services, click [here](#).

8D.2.1: If you are diagnosed with or being treated for a mental illness and have children in your care

[Because of reporting of possible serious harm](#) to Community Services NSW by a range of health and other professionals, if you have care of children and you are:

- diagnosed with a mental illness;
- being treated for a mental illness;
- on a Community Treatment Order;
- behaving in a way that someone thinks you might have a mental illness that affects your ability to care for children; it is very possible that you will come to the attention of Community Services NSW workers.

If you have been reported and a Community Services NSW worker comes to your home to talk to you and your children, it does not necessarily mean that your children will be taken away from you.

[Community Services NSW will assess the risk of serious harm](#) to the children and consider options, other than putting your children in foster care, even if they think there is a risk of serious harm.

It is important to remember that not doing enough for your children ('neglect') is as serious as 'abuse' (inflicting physical, sexual or psychological harm, this includes allowing children to witness domestic violence) on your children.

Therefore if you are not able to manage it is best to get help before someone asks Community Services NSW to get involved. [Click here to find out how to get help or advice about caring for your children.](#)

8D.2.2: If you have to stay in hospital and have young children in your care

If you go to hospital suddenly and you are made an involuntary patient when you have young children in your care, arrangements will have to be made to care for the children, at least while you are in the hospital and probably for a longer recovery period.

If you are married or in a de facto relationship, your partner may take over the care of the children in this period (perhaps with some help from other family members, older young children and friends).

However, if you are a single parent or your spouse or partner can't look after the children because of work for example, then arrangements will need to be made for their care. In this situation, other family members, such as grandparents, or friends may be able to look after the children for several weeks or even months. You may be able to get help from a social worker (either in the hospital or in the community) to sort out such arrangements.

However, if no-one can be found to look after your children then this will be reported to Community Services NSW and it will have responsibility for the care of the children. This does not mean that you will lose the responsibility to care for your children in the long term. What it does mean is that Community Services NSW and possibly the Children's Court will need to be satisfied you are able to look after your children properly before they are returned to you.

If there are no appropriate family or friends to look after your children, [Community Services NSW is likely to place your children in foster care](#).

Mothers used to be able to have their newborn or very young babies in hospital with them if they had to be admitted to a NSW psychiatric hospital or unit. This is no longer possible. Current NSW Health policy is that there are not enough resources or facilities for this to happen.

Northern Sydney Central Coast Health has an online pamphlet called 'Tips for managing your parenting role during a mental health admission'. [Click here to go to the link page to download this pamphlet.](#)

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- This Manual only refers to the law and practices applying to the Australian state of New South Wales (NSW).
- MHCC does not guarantee the accuracy nor is responsible for the content or the currency of the content of external documents and websites linked to this Manual.

Part 8 Section E : Children and young people with mental illness

Children and young people are just as susceptible to mental illness as adults, but because young people and children are often not as experienced and as mature as adults, there are specific safeguards in place to make sure the rights and interests of children and young people are respected.

This section gives an overview of the following aspects of the rights and safeguards for children and young people getting mental health care in NSW:

- [Rights in relation to consenting to medical examination and treatment](#)
- [Care for young people with mental illness](#)
- [Rights in relation to legal representation](#)

Other information about children and young people with mental illness that is provided in this section:

- Can a young person admit themselves to a mental health facility?
- [Options in treatment and accommodation](#)
- [Young people at risk of self-harm](#)
- [Children and young people in need of care](#)

8E.1: The rights of children and young people to consent to medical examination and treatment

The law that regulates the care and treatment of adults with a mental illness applies to children and young people as well. This is the *Mental Health Act 2007* (NSW).

There are no parts of the law that deal specifically with the treatment of a young person with mental illness, but there are a number of sections of the *Mental Health Act 2007* (NSW) that set out the process for admission of children and young people to hospital. [Click here to find out more about whether or not you, as a young person, can admit yourself to a mental health facility.](#)

The national [Mental Health Statement of Rights and Responsibilities](#) states that if you are a child and are admitted to a mental facility or a community program, you have the right to the following:

- to be kept separate from adult patients
- to be given programs that are suited to your developmental needs
- to have somebody to represent you and protect your rights

At the time of writing the Manual, NSW Health was redeveloping its policy on child and adolescent mental health. The policy will set out the guiding principles for public health services in providing mental health care to young people. For more information, contact the Mental Health and Drug and Alcohol Office at NSW Health:

NSW Health

Phone: 02 9391 9000

Fax: 02 9391 9101

Street address: 73 Miller Street

North Sydney NSW 2060

Postal address: Locked Mail Bag 961

North Sydney NSW 2059

Medical examinations and medical treatment of a young person must be legally authorised. This means that a [valid consent](#) must be given to the doctor or health care professional before an examination or treatment is done. If a [valid consent](#) is not given, then the examination or treatment is an assault.

Click the following links to find out more about:

- [What is a valid consent?](#)
- [Consent in an emergency](#)
- [How old do you have to be to give valid consent?](#)
- [Carers and consent to medical treatment](#)

8E.1.1: Can a young person admit themselves to a mental health facility?

If you are over 16, you can admit yourself into a mental health facility as a voluntary patient and your parent does not have to be told if you do not want them to be.

If you are younger than 16, your parent can admit you as a voluntary patient. You can also admit yourself to a mental health facility, but a medical officer at the facility must do their best to let your parent know of your admission.

If your parent objects to you being in a mental health facility and you are 14 or 15 years old, you can still stay at the facility if you choose to do so.

If your parent objects to you being in a mental health facility and you are under 14 years old, the hospital cannot admit you. You must be discharged if and when your parent or guardian asks that you be discharged.

8E.1.2: What is a valid consent?

You agreeing to treatment is called 'consent' to treatment. A provider of health care must take reasonable steps to make sure that you, as a patient, understand key aspects of any treatment they suggest before asking you to agree to the treatment. Key aspects include, for example, risks. You agreeing to the treatment once you have been given the information and understand it is called 'informed consent' to treatment. Informed consent by a person who has capacity is a valid consent.

To find out more about consent, click [here](#).

8E.1.3: Consent in an emergency

In an emergency, health care professionals can treat you without any consent from you or your parent or guardian.

8E.1.4: How old do you have to be before you can consent to treatment?

Whether your permission to have treatment can be accepted as informed consent by the health care professional depends on a number of factors, in particular whether or not you can understand the decision that you need to make and the effects of that decision.

The following principles are largely accepted by health care professionals in NSW about who can give consent to your medical treatment:

- If you are **16 or older**, you can consent to medical examination and treatment.
- If you are **under 16**, the consent generally needs to be from your parent or guardian. Sometimes, depending on the treatment, if you are older than 13, the health care professional may consider you able to consent (have the 'capacity' to consent).

Sometimes, even when you are older than 16, if the medical professional believes strongly that you don't have the capacity to give informed consent, the medical professional may ask your parent to consent on your behalf. If you don't have a parent to consent on your behalf, then the health care professional may need to apply to the Guardianship Tribunal to get substitute consent for anything more than minor treatment.

The Guardianship Tribunal can give consent to medical treatment on behalf of a person who is over 16 and unable to make an informed decision, usually because of illness or disability. [Click here for more information on the Guardianship Tribunal and what it does](#).

There are different rules if you are an involuntary patient under the *Mental Health Act 2007* (NSW) and you have nominated a Primary Carer under that Act.

If you are not under Guardianship and are under 15, your parent is your Primary Carer.

If you are 15 or older, but younger than 18, you can name a person other than your parent as your Primary Carer, but you can't stop your parent from being told or given information about your situation.

If you are under Guardianship, your Guardian is your Primary Carer. A Guardian is a legally appointed person who can make decisions on your behalf. If you have a Guardian, only your Guardian can consent to medical treatment on your behalf.

Click here to find more information about Primary Carers and the [Mental Health Act 2007 \(NSW\)](#).

For more about the Guardianship hearing process, click [here](#).

8E.2: Options for treatment and accommodation for children and young people with mental illness

There are a few places you can go if you are a young person and are worried you might have a mental illness, and want to get information and/or help:

Your local GP: the best place to start is usually your local General Practitioner, who can make an assessment and refer you to an appropriate specialist.

Community health services and hospital clinics: many community health services and public hospital clinics also have health care professionals who specialise in the mental health of children and young people.

Child and adolescent psychiatrist: these are psychiatrists who specialise in children, adolescents and families. They can assess you and also prescribe and monitor medication.

If your mental illness becomes worse, there are a number of mental health facilities that admit children and adolescents. Some of these facilities provide accommodation and access to education during the admission. Admission to these facilities is often based on referral by health practitioners or other qualified professionals.

The [Mental Health Association NSW](#) has a fact-sheet on when and where to seek help for a child with mental illness. [Click here to go to the web link to view the fact-sheet](#).

You can call the Mental Health Information Service on **1300 794 991*** for more information about accessing mental health services in your area.

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) and to Local call numbers (numbers starting with 13 or 1300) are charged to the caller at the usual mobile rate.

8E.3: Young people at risk of self-harm

Self-harm is a problem for many young people and it is often linked to the young person's mental health. While there are many different reasons why a person may self-harm, and different people may give it a different name, self-harm is basically an action that someone takes to deliberately hurt themselves without necessarily wanting to kill themselves.

Despite usual confidentiality rules, if, for example, a GP or a social worker or another person in authority thinks you are a young person at risk of serious harm, they must report this to Community Services NSW. You may be considered at risk of harm if you are harming yourself.

This reporting requirement applies to any person working in children's services, health care, welfare services, education, residential services and law enforcement.

If you are under 16: You are considered a **child** under the *Children and Young Persons (Care and Protection) Act 1998* (NSW). A worker from any of the services as listed above **must** report concerns about your safety and wellbeing if they have reasonable grounds to believe that you are at risk of harm. If you are injecting drugs, you are also considered to be at serious risk of serious harm.

You are 16 or 17: You are considered a **young person** under the *Children and Young Persons (Care and Protection) Act 1998* (NSW). A worker with reasonable suspicion that you are at risk of serious harm may decide to report it to Community Services NSW, but they should involve you in making that decision, unless if there are good reasons for excluding you. If you do not want the report to be made, the worker may still report it, but they must tell Community Services NSW of your wishes. Community Services NSW must also consider your wishes when deciding how to respond to the report.

To find out what happens when a report has been made about a young person, click [here](#).

If you are harming yourself or you know another young person who might be, there are many resources for you to find out how to prevent or stop self-harm, and how to support someone to stop harming themselves. Information and/or resources are available from:

- [ReachOut.com](#): provides resources on deliberate self-harm.
- [Children, Youth and Women's Health Service](#): has a fact sheet on self-harm.
- [Youth beyond blue](#): has a webpage and fact sheets on 'Managing self-harm'.
- [Kids Help Line](#) on **1800 551 800*** or [online](#).

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

8E.3.1: What happens if a report is made about me as a child or young person?

Community Services NSW must respond if someone reports that they think you are at risk of serious harm.

If Community Services NSW gets a report that you may be at risk of harm, it will investigate to work out if you really are at risk of serious harm. It may contact your parent or carer, your teacher, your doctor, and other people who you may be close to in order to find out more about the situation you are in. Community Services NSW must involve you in its decision-making process as much as possible.

If Community Services NSW decides that you are not at risk of serious harm, it may close its investigation.

If Community Services NSW decides you are at risk of serious harm, it will take action to protect you from further harm. The actions that Community Services NSW takes will depend on its assessment of your risk of serious harm. For example, Community Services NSW may provide practical help to your family such as organising childcare, counselling or referral to health or other services; and may work with your family to develop a care plan. In some cases, it may apply to the Children's Court for orders about your care and protection.

[For more information about how Community Services NSW may respond to a report of suspected risk of serious harm, click here.](#)

8E.4: Right to legal representation

Children and young people may need legal representation. Legal representation means having your interests represented by a lawyer.

If you have a legal problem that is to do with mental health treatment or care or hospitalisation, you can contact the Mental Health Advocacy Service (MHAS) for legal advice. The MHAS may also be able to represent you at a Mental Health Review Tribunal hearing.

To contact the Mental Health Advocacy Service call (02) 9745 4277 or [click here for more information](#).

There are other specialised legal services for children and young people in NSW:

[Marrickville Legal Centre](#) is a Community Legal Centre that has a Children's Legal Service that provides free legal information, advice and assistance to people under 18.

Phone: (02) 9559 2899.

[The Shopfront Youth Legal Centre](#) is a free legal service for homeless and disadvantaged young people aged 25 and under.

Phone: (02) 9322 4808.

[Legal Aid NSW's Children's Legal Service](#) can provide representation in the Children's Courts for welfare or criminal matters. For immediate advice, you can call the **Legal Aid Youth Hotline**:

Freecall: 1800 101 810*.

[Lawstuff](#) is an online legal help service for young people under 18. It allows you to e-mail your legal questions to the National Children's and Youth Law Centre.

Website: <http://www.lawstuff.org.au/>

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Part 8 Section F : People with mental illness and coexisting drug and alcohol problems

8F.1: General information

Many people with mental illness also have coexisting drug and alcohol problems. There is considerable evidence that the continued use of some drugs leads to mental illness.

Some people with mental illness use non-prescription drugs or alcohol to help them cope with their illness. This can lead to addiction or dependence on the drugs and alcohol they use.

Often people with mental illness and co-existing drug and alcohol problems experience difficulty when trying to get treatment for their drug and alcohol problem. Many services and agencies only work with either drug and alcohol, or mental illness, and can't or won't treat both problems at the same time.

The NSW Government acknowledging this issue established the NSW Mental Health and Drug and Alcohol Office (MHDAO), which has consultation liaison services to ensure that NSW hospitals have timely access to specialist staff to help with the management of patients who have both mental health and drug and/or alcohol problems. [Click here for more information about the MHDAO](#). Nevertheless, the issue of getting appropriate services in the community is still a problem for many people with both mental health and coexisting drug and alcohol issues.

Similarly, people with mental health and coexisting drug and alcohol problems often experience poor physical health. NSW Health has a policy on linking physical care and mental health care and has produced a pamphlet on this issue, '[What to expect from a mental health service](#)'; [click here to read](#).

[Click here to read the information sheet, 'Linking physical and mental health care - it makes sense for families, carers and friends'](#).

[To access the full NSW Health policy, 'Physical Health Care of Mental Health Consumers', click here](#).

The principles and policies that apply to all health services are available on the [NSW Health website](#).

Each Area Health Service in NSW also has their own policies and procedures. [Click here for a list of NSW Area Health Services with a links to their websites](#).

If you are not satisfied with an Area Health Service response, you could complain to the [Health Care Complaints Commission](#).

[Click here for a NSW Health list of NSW Mental Health services and NSW Drug and Alcohol Services](#).

For more information about other drug and alcohol support and information services, click [here](#).

8F.2: Other drug and alcohol support and information services

- [NSW Users & AIDS Association Inc](#)
- [NSW Drug and Alcohol Information and Treatment Services](#)
- [Drug Info Clearinghouse – Drugs and Mental Health](#)
- [Australian Drug Information Network - Co-morbidity](#)
- [Guthrie House](#): a community-based residential rehabilitation and transition service for women who are involved in the NSW criminal justice system.
- [The Community Forensic Mental Health Service](#)
- [The Connections Project](#)
- [The Adolescent Community and Court Team](#)

8F.2.1: The Connections Project

The Connections Project provides post-release support to people leaving prison in NSW who have a history of problematic drug use. Many of these people also have mental health issues. A Clinical Support Worker assesses people while they are in prison before their release and develops a comprehensive care plan that includes addressing all aspects of the person's needs. This could include, for example, their health needs (linking them with services), helping them get ID, getting them a Medicare card, helping with housing, Centrelink, links to drug and alcohol and mental health services, and advocating for them. Support is provided for one month after the person's release, but can be extended up to three months for people with complex needs and/or who haven't linked into services adequately.

The Connections Project is available in all Correctional Centres in NSW and follow-up is provided anywhere in NSW.

If you are currently in prison and are interested in joining the Connections Project or would like to get more information about it, you can talk to a nurse in the clinic in your correctional centre.

8F.3: Involuntary treatment for drug and alcohol problems

[Consent for treatment for drug and alcohol problems is the same as for any other medical condition: treatment can usually only be given with the informed consent by the person getting the treatment](#). This means that the treatment must be voluntary.

However, there are laws that allow involuntary treatment for drug and alcohol problems in NSW:

- If you live in the area covered by Sydney West Area Health Service, you can be treated without your consent under the [Drug and Alcohol Treatment Act 2007 \(NSW\)](#).
- If you live in NSW but outside the Sydney West Area Health Service, you can be treated without your consent under the [Inebriates Act 1912 \(NSW\)](#).
- If you are charged with a serious criminal offence, you can also be ordered into compulsory treatment by the NSW Drug Court under the [Drug Court Act 1998](#)

[\(NSW\)](#).

8F.3.1: Treatment under the *Drug and Alcohol Treatment Act 2007 (NSW)*

People treated under the *Drug and Alcohol Treatment Act 2007 (NSW)* are part of the Drug and Alcohol Involuntary Treatment Trial and must live in the Sydney West Area Health Service catchment area. [For a map of NSW Area Health Services click here.](#)

Under this Act, an accredited medical practitioner can issue a dependency certificate that means the person can be detained for up to 28 days in the first instance.

A dependency certificate may be issued in relation to the person only if the accredited medical practitioner is satisfied:

- the person has a severe substance dependence, and
- care, treatment or control of the person is necessary to protect the person from serious harm, and
- the person is likely to benefit from treatment for his or her substance dependence but has refused treatment, and
- no other appropriate and less restrictive means for dealing with the person are reasonably available.

The accredited medical practitioner can also take into account any serious harm that may occur to children in the care of the person, or other dependants.

There is currently only one place where people are being treated under this law: the Centre for Addiction Medicine at Nepean Hospital.

A magistrate must review a dependency certificate as soon as practicable after it is issued.

The magistrate can:

- discharge a patient, or
- uphold, extend or shorten the time of involuntary treatment under a dependency certificate.

Legal aid is available through duty solicitors for the reviews held before the visiting magistrate. Contact Law Access on **1300 888 529*** for more information.

If you are unhappy with the magistrate's decision, you can apply to the Administrative Decisions Tribunal (ADT) for a review of the decision. [For more information about the ADT, click here.](#)

Official Visitors have been appointed for people participating in the Drug and Alcohol Involuntary Treatment Trial at Nepean Hospital. They have the same role as Official Visitors under the *Mental Health Act 2007 (NSW)*. This means that you can contact an Official Visitor if you have concerns about your care and treatment as an involuntary patient under the trial as well as to make complaints and concerns about the physical conditions at the hospital.

To contact the **Official Visitors Program**:

Postal address: Locked Bag 5016

GLADESVILLE NSW 1675

Telephone: (02) 8876 6301

Website: http://www.ovmh.nsw.gov.au/index.php?option=com_contact&view=contact&id=1&Itemid=7

The *Drug and Alcohol Treatment Act 2007 (NSW)* also allows you to name a person as your Primary Carer so that they will have access to certain information about you while you are detained under this Act. [These parts of the Act are very similar to those relating to Primary Carers](#) in the *Mental Health Act 2007 (NSW)*.

8F.3.2: Treatment under the *Inebriates Act 1912 (NSW)*

There are now very few persons being treated against their will under the *Inebriates Act 1912 (NSW)*.

This Act defines an 'inebriate' as a person who 'habitually uses intoxicating liquor or intoxicating narcotic drugs to excess'.

The process under this Act begins with an affidavit (sworn statement) from a family member, a business associate, medical practitioner or police officer that the person is an inebriate. This affidavit must be supported by a medical certificate from a medical doctor (or a second doctor, if a doctor swore the original affidavit).

A court, usually a Local Court, may then make an order for the person to be detained under the Act. The person detained may be treated without their consent in a public psychiatric hospital in NSW for up to 12 months. A court can also discharge the person into the care of a guardian or put the person on a bond that requires them to not use alcohol for a period up to 12 months.

The *Inebriates Act 1912 (NSW)* contains provisions for the compulsory treatment and diversion of persons charged with criminal offences.

These sections have been effectively replaced by the [Drug Court Act 1998 \(NSW\)](#) and sections 32 and 33 of the [Mental Health \(Forensic Provisions\) Act 1990 \(NSW\)](#).

8F.3.3: Treatment under the *Drug Court Act 1998 (NSW)*

If you plead guilty to a serious offence for which you are likely to receive a prison sentence, and you are drug dependent, you can be referred to the Drug Court.

The Drug Court may then make an order directing that you serve your sentence of imprisonment by way of compulsory drug treatment detention.

If you are male, you may be detained and treated at the Compulsory Drug Treatment Correctional Centre at Parklea. For more about this Correctional Centre, [click here](#).

8F.4: Diversionary programs for people with drug and alcohol problems

There are programs available for people with drug and alcohol problems who face less serious criminal charges. These are usually called 'diversionary programs' because they are intended to 'divert' a person from criminal behaviour that is linked with drug and alcohol problems, to treatment for those problems rather than punishment.

Diversionary programs are voluntary, in that they are not carried out with you being held behind locked doors in an institution, such as prison or a psychiatric hospital, but there may still be serious consequences if you fail to finish or co-operate in a program. If you do this you are likely to be taken back to court to have the original offence dealt with again. It is best to get [legal advice](#) before you agree to doing a diversionary program.

Programs such as the Court Referral of Eligible Defendants into Treatment (CREDIT), the Rural Alcohol Diversion Program (RAD) and the Magistrates Early Referral into Treatment (MERIT) are examples of such programs. [Click here to find information about the diversionary programs that may be available to you.](#)

There is also a NSW Youth Drug and Alcohol Court (YDAC), which aims to reduce re-offending by young people who have become entrenched in the criminal justice system, by diverting them into diversionary programs to overcome their drug and alcohol problem. [Click here to find out more.](#)

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Part 8 Section G : People with mental illness and other disability

8G.1: Introduction

This section has information about having a mental illness and another disability at the same time. Sometimes this is called 'dual diagnosis' or 'co-morbidity'.

The information is about how having a mental illness might affect how you are dealt with in relation to the other disability.

There is information about having a mental illness and:

- [An intellectual disability](#)
- [An acquired brain injury](#)

8G.2: Intellectual disability

It's not always easy to identify mental illness in a person with intellectual disability. There are a number of reasons for this. People with intellectual disability:

- can't always describe their symptoms to a doctor or psychiatrist
- may not be able to communicate verbally
- may have symptoms that are different from those described in the diagnostic guidelines for mental illnesses
- may be wrongly assumed to have behaviour problems because of their intellectual disability rather than mental illness
- may have physical conditions that produce symptoms similar to mental illness

(From WA Disability fact sheet, http://www.disability.wa.gov.au/dscwr/_assets/main/instructional/documents/doc/dual_diagnosis-miandid.doc)

The [NSW Council for Intellectual Disability](#) is the peak body representing the rights and interests of people with intellectual disability in NSW. Its website has factsheets and information both in standard and in 'easy' English, [which can be accessed by clicking here](#).

The NSW Council for Intellectual Disability also has a confidential information and referral service on matters relating to intellectual disability. It has developed a comprehensive information database, ASK CID, that has the details of over 1,400 services and resources available to people with intellectual disability and their families, advocates and service providers.

[Click here to go to ASK CID website](#) or contact the **NSW Council for Intellectual Disability** at:

Freecall: 1800 424 065*

Phone: (02) 9211 1611

Fax: (02) 9211 2606

E-mail: mail@nswcid.org.au

Street address: Level 1, 418A Elizabeth Street

SURRY HILLS NSW

[Click here to access a list \(with websites\) of NSW disability and advocacy services: national disability advocacy services, relevant NSW government departments and agencies and other useful websites.](#)

For legal advice about intellectual disability issues, contact the **Intellectual Disability Rights Service (IDRS)**. IDRS gives free legal advice and information to people with an intellectual disability or others acting on their behalf in NSW. Initial advice is provided over the phone by appointment. [Click here to go to](#)

[the IDRS website.](#)

IDRS also runs the Criminal Justice Support Network (CJSN). The Criminal Justice Support Network (CJSN) is a support and information service for people with intellectual disability who are victims, witnesses, suspects or defendants in criminal matters. [For more information about the Criminal Justice Support Network, click here.](#)

To get a support person or legal advice for people with intellectual disability in police custody, please call **1300 665 908***.

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) and to Local call numbers (numbers starting with 13 or 1300) are charged to the caller at the usual mobile rate.

8G.3: Acquired brain injury

[The Brain Injury Association of NSW](#) defines an acquired brain injury as:

"... damage to the brain that occurs after birth but is not due to an inherited disorder or degenerative disease. Damage may be caused either by a traumatic or non-traumatic injury to the head."

The NSW Brain Injury Association distinguishes between a 'traumatic brain injury' and 'non-traumatic brain injury'.

Traumatic Brain Injury is damage to the brain caused by an external physical force to the head. This can happen as a result of a motor vehicle accident, assault or a fall.

Non-traumatic acquired brain injury can result from tumour, brain infection, aneurysm or anoxia, drug and/or alcohol abuse, stroke, or disease such as Huntington's disease.

More information about acquired brain injury can be found at:

- [Brain Injury Association of NSW](#)
- [Brain Injury Australia](#)

People with mental illness may also have an acquired brain injury and this can affect access to services and treatment.

Services for mental illness and services for acquired brain injury tend to be provided by different organisations. These different services and agencies often don't have specialist knowledge and insight into the causes, symptoms and treatment of the 'other' condition.

There are some limited services that may be able to help a person with both a mental illness and a brain injury to get co-ordinated services for both of their conditions.

For more about acquired brain injury and mental illness, click [here](#). For information about advocacy services for people with acquired brain injury and mental illness, click [here](#).

8G.3.1: Acquired brain injury and mental illness

There are various ways acquired brain injury can be linked to mental illness:

- Some mental illness may be either based on or associated with a physical condition or biological process.
- Some people with an acquired brain injury have psychological problems that may be made worse by their injury.
- Mental illness can develop as a direct result of the brain injury because of damage of specific areas of the brain.
- A person with an acquired brain injury can develop mental illness in reaction to the traumatic stress associated with the accident that caused their injury or ongoing negative experiences in life linked to the injury.
- Self-medication (such as the use of non-prescription drugs or alcohol) for mental illness may cause a non-traumatic acquired brain injury.

8G.3.2: Advocacy Services for people with a mental illness and a brain injury

The **NSW Brain Injury Association** provides a case-management service to help people with acquired brain injury, aged between 16 and 75 years of age in NSW (currently restricted to those living within Metropolitan Sydney), who have complex needs and cannot access existing or appropriate services.

The Brain Injury Association also provides advocacy for people with acquired brain injury in NSW.

[For further information about the Brain Injury Association of NSW please click here.](#)

The Brain Injury Association of NSW can be contacted on (02) 9868 5261 or on 1800 802 840* if you live outside Sydney.

The Brain Injury Association and **Disability Advocacy NSW** are providing improved access to specialist disability advocacy support for people with an acquired brain injury in the Mid-North Coast region of NSW.

The purpose of the project is to better support people with an acquired brain injury with local face-to-face advocacy by combining the local presence and expertise of Disability Advocacy NSW with the specialist knowledge and expertise of Brain Injury Association.

[For more about this project, click here.](#)

To find out how an individual advocate may be able to help, contact Disability Advocacy NSW on 1300 365 085* or e-mail: mnc@da.org.au.

People with Disability Australia has a free individual and group advocacy service for people with disability. The service provides non-legal advocacy to individuals and groups of people with disability who have serious and urgent problems. The service also gives information to people with disability and their

associates about how to advocate for themselves. This service is available to people with all kinds of disability no matter where they live in New South Wales.

[Click here to go to the People with Disability Australia website.](#)

People with Disability Australia can be contacted at:

Phone: (02) 9370 3100

Freecall: 1800 422 015*

Fax: (02) 9318 1372

Teletypewriter (TTY): (02) 9318 2138

TTY Freecall: 1800 422 016*

E-mail: pwd@pwd.org.au

Street address: 52 Pitt Street
REDFERN NSW

Postal address: PO Box 666
STRAWBERRY HILLS NSW 2012

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) and to Local call numbers (numbers starting with 13 or 1300) are charged to the caller at the usual mobile rate.

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Chapter 9 - Carers

Part 9 Section A : Overview

In this Manual, the word 'carer' is used to describe a person who has responsibility for some aspect of the care of a family member or friend with a mental illness.

This is not to be confused with paid professional carers such as health care professionals or health care workers who provide treatment and/or care to a person in a hospital, aged- or disability-care facility, outpatient facility or in the person's own home.

Sometimes carers are called 'responsible persons' but often responsibility for a person is shared between family members and friends.

Sometimes, but not always, this happens through a formal discussion about the division of tasks and responsibilities. Sometimes a person may be a full-time carer for a person with mental illness and share the same residence. Sometimes a person may have little or no day-to-day, face-to-face contact with the person, but may, either through prior legal or informal arrangement, or simply through the evolution of circumstances, be the principle decision-maker for a person who lacks the physical and/or mental capacity to make certain decisions for themselves. Sometimes, in the context used in this Manual, a carer might also be a concerned parent of an adult who is living independently and finds himself or herself in interaction with the mental health system.

This part of the Manual provides information to anyone who cares for another person who is involved with the mental health system because of mental illness. It has information about the rights and responsibilities of carers, as well as providing information for carers to help them advocate on behalf of those friends or family members they care for in their interaction with the mental health and legal systems.

It is important to note that, [putting questions of capacity aside](#), sometimes a person and their carer have very similar views about the care and treatment that the person should receive in the mental health system. Sometimes a person wants to be admitted to hospital and their carer supports them in this but a hospital refuses to admit them.

Sometimes, however, the views of a person with mental illness are completely different from those of their carer. A carer might think that their family member or friend should not be in hospital, even though that person is a voluntary patient. Alternatively, a carer might think their family member or friend should be admitted as an involuntary patient, but that person strongly disagrees to hospitalisation or rejects a diagnosis of mental illness.

This part deals with the rights and responsibilities of different people and authorities that a carer might need to know about in all these possible situations.

The *Mental Health Act 2007* (NSW) provides for people with mental illness to nominate a 'Primary Carer' with rights of access to certain otherwise confidential information about the consumer under that Act. The Act also provides Primary Carers with a role in treatment plans and discharge plans. This is only one aspect of the potential interaction between carers and the family member or friend with mental illness for whom they care.

It is important to remember that all carers, people with mental illness and health care providers have legal rights and responsibilities, both under previous mental health laws and under the general law. Those rights and responsibilities continue, and in reality, are not significantly changed by the *Mental Health Act 2007* (NSW).

You will find information in this part of the Manual about how you can support your friend or family member:

- Being a Primary Carer under the [Mental Health Act 2007 \(NSW\)](#)
- [Appointment of a Primary Carer](#)
- [Access to patient information](#) and [privacy and confidentiality](#)
- [Information to be provided to Primary Carers](#)
- [Access for Primary Carers and others to patient information with consent](#)
- [Guardianship and financial management for a person with mental illness with limited decision-making capacity](#)
- [Establishing a relationship with health care providers](#)
- [If you are a child or a young person and are caring for a family member with a mental illness](#)
- [Trying to get a friend or family member to seek treatment](#)
- [Mental health treatment provided in prison](#)
- [Getting a friend or family member admitted for treatment](#)
- [How you can help a family member or friend to challenge medication and treatment decisions](#)
- [How you can help a family member or friend who wants to be discharged from hospital](#)
- [How you can help or advocate for someone who does not want to be on a Community Treatment order \(or wants to vary the order\)](#)

This part of the Manual also provides:

- [Information about wills and disability trusts to provide in the future for someone with a disability](#)
- [Information about your rights as a carer](#)
- [Information and links about where you can get support as a carer](#)

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Part 9 Section B : Supporting your family member or friend

This section of the Manual provides information about how carers, family members and friends of a person with mental illness can be involved in supporting them in their interaction with the health care system.

In this section you will find information on:

- [Primary Carers under the *Mental Health Act 2007* \(NSW\), including the appointment of a Primary Carer, access to patient information, what information is to be provided to the Primary Carer and access to patient information with consent](#)
- [Right to be heard in relation to the treatment of a friend or family member with mental illness](#)
- [Children and adolescents who are carers for a person with mental illness](#)
- [Getting your family member or friend to seek mental health treatment](#)
- [Having a family member or friend admitted to hospital](#)
- [Helping your friend or family member to challenge medication or treatment decisions](#)
- [Helping a friend or family member to be discharged](#)
- [Helping your family member or friend to challenge a Community Treatment Order](#)

9B.1: Primary carers under the *Mental Health Act 2007* (NSW)

'Primary Carers' under the *Mental Health Act 2007* (NSW) are given special rights to be informed of some legal proceedings that are held under the Act and to be given other specific patient information.

In this section you can find out more about:

- [Appointment of a Primary Carer](#)
- [Access to patient information](#)
- [Information to be provided to Primary Carers](#)
- [Access for Primary Carers and others to patient information with consent](#)

9B.1.1: Appointment of a Primary Carer

The *Mental Health Act 2007* (NSW) allows a patient (both voluntary and involuntary) to appoint a 'Primary Carer', who then automatically receives certain information about the person with mental illness.

One purpose of the 2007 changes to the *Mental Health Act 2007* (NSW) was to recognise the importance of carers and give them access to some information to help them to provide care, whilst at the same time giving the person with mental illness the right to control who will be accessing this information.

Main features of this part of the law are that:

- a person with mental illness nominate (in writing) a person as their Primary Carer
- a person with mental illness can also put in writing that they don't want a particular person to be their Primary Carer
- a person with mental illness can revoke (cancel) a nomination of a Primary Carer
- nominations can be made at any time but stay in force for 12 months unless changed (revoked) by the person with mental illness
- in very limited circumstances, the nomination or revocation by the person with mental illness can be overturned.

If a person with mental illness does not nominate a Primary Carer, one of the following will be regarded ('deemed') under the *Mental Health Act 2007* (NSW) as the Primary Carer:

- a guardian (either Tribunal-appointed or an enduring guardian)
- a spouse (includes de facto spouse), 'if the relationship between the patient and the spouse is close and continuing'
- a person who is primarily responsible for providing support or care to the patient ('other than wholly or substantially on a commercial basis')
- a close friend or family member

In practical terms, a person who is deemed to be the Primary Carer (rather than nominated by the person with mental illness) continues as Primary Carer until the person with mental illness nominates someone else or makes an active revocation (cancellation) of the person as their Primary Carer. The Act doesn't say anything about what happens if a person with mental illness does not nominate a Primary Carer and there are two or more people who are eligible under the *Mental Health Act 2007* (NSW) to be the person's Primary Carer.

The parents of a child under 14 who is a patient under the *Mental Health Act 2007* (NSW) are the Primary Carers of that child. The *Mental Health Act 2007* (NSW) says when a person with mental illness has reached 14 they can nominate their Primary Carer but also says if they are between 14 and 18, they can't exclude their parents from getting the information listed in the [Mental Health Act 2007 \(NSW\)](#).

9B.1.2: Access to patient information

People, including people with mental illness who are in hospital, can give permission for other people to have access to their private health information. Before 2007, public psychiatric hospitals had no standard procedures and rules to allow this to happen, and family members and spouses of adult competent patients participated in the care of patients in an ad hoc way. They were often not given information about patients on the grounds of 'privacy', even where those patients had (or would have if they were asked) agreed to a carer having access to the information.

Some family members want information about discharge and leave approved for involuntary patients because, for example, they want to be able to make sure appropriate support is in place or because they have fears of unwanted contact with the person. [Click here to read about helping your friend or family member to be discharged.](#)

Under the *Mental Health Act 2007* (NSW), Primary Carers have the right to be given certain information. For more about this, click [here](#).

Primary Carers do not have access to all patient information. The following information all remain confidential:

- Diagnoses
- Treatment other than drug treatment
- Results and details of assessments and tests
- Content of conversations between doctor and patient.

If the Primary Carer or any other family member or friend is given any of this information without the consent of the patient, the patient could complain to the [Health Care Complaints Commission \(HCCC\) about a breach of confidentiality](#) and to either the [NSW or Federal Privacy Commissioner](#) about a breach of their rights under the privacy principles. (Such a complaint would be against the organisation or person that released the information not the person to whom it was given.)

9B.1.3: Information to be provided to Primary Carers

The Primary Carer is to be told:

- if and when the person with mental illness is due to be part of a mental health inquiry by the Mental Health Review Tribunal
- if the person with mental illness is detained in hospital
- what medication the person with mental illness has been given in hospital
- if the person with mental illness is away from the facility without permission or fails to return at the end of a period of leave
- if it is proposed to transfer the person with mental illness to another mental health facility or other health facility
- if the person with mental illness is discharged from the mental health facility
- if the person with mental illness has been re-classified as a voluntary patient
- if the health care provider is proposing to apply to the Mental Health Review Tribunal for an Electro Convulsive Therapy (ECT) approval or for a decision about whether the person with mental illness is capable of giving informed consent to ECT
- if a surgical operation is performed on the person with mental illness and they do not give consent or do not have capacity to give consent
- if the health care provider is proposing to apply to the Director-General of NSW Health or the Mental Health Review Tribunal for consent to perform a surgical operation or special medical treatment that requires special consent under the *Mental Health Act 2007* (NSW)

The *Mental Health Act 2007* (NSW) also requires the mental health facility to consult with the Primary Carer about a discharge plan prepared for the release of the person with mental illness from hospital.

A Primary Carer can also get information about the medication a person with mental illness is being given under a Community Treatment Order (CTO).

9B.1.4: Access for Primary Carers and others to patient information with consent

If a person with mental illness agrees to their Primary Carer, any other carer, family member or friend having access to the whole of their medical records, then no privacy or confidentiality obligations are breached. Arranging for this access to be provided will usually only come after negotiation with the health care provider.

It is important to note that if a Primary Carer is not nominated by the person with mental illness but deemed under the [Mental Health Act 2007 \(NSW\)](#), they only have a right to access the information specified in the *Mental Health Act 2007* (NSW). To access other health information in the patient's files, they would need the patient's active consent, and probably in writing.

People who want to have maximum participation in their friend or family member's care and treatment, and have that person's support for this, should encourage the person to nominate them as their Primary Carer and to be given access to all of the person's otherwise confidential files. It is best for the person with mental illness to do this when they are well, have an independent person (such as a lawyer) help them prepare the document saying this is what they want, and provide a copy of this document to all their usual health care providers.

9B.2: Right to be heard and participate in the treatment of friends and family members

[Unless you are the Primary Carer of the person](#) or [have written consent from the person](#), you do not have an enforceable right to participate in the treatment of friends or family members.

This general statement is affected by the law in the following particular situations:

- [Guardianship and financial management for a person with mental illness with limited decision-making capacity](#)
- [Appointment of a Primary Carer](#)
- [Privacy law and confidentiality](#)
- [Establishing a relationship with health care providers](#)

9B.2.1: Guardianship and financial management for person with mental illness with limited decision-making capacity

A guardian of a person with limited capacity has some right to be heard and participate. If a person does not have the mental and/or physical capacity to make a range of everyday decisions, then a [guardian is appointed to make these decisions](#). There is a separate process for financial decisions. A person can be granted an Enduring Power of Attorney to make financial decisions, and/or be made an Enduring Guardian (for other decisions) by a person with mental illness when they have capacity, with these authorities only having effect when the person loses capacity. For more about financial management, click [here](#).

The extent of a guardian's right to intervene in health care decisions about another person depends on the terms of the order that creates the guardianship.

For more about guardianship, click [here](#).

9B.2.2: Privacy law and confidentiality

Privacy and confidentiality is sometimes relied on to limit or prevent communication between carers, family members and friends and the health care provider. [Privacy principles under privacy laws](#) regulate access to and collection, use, disclosure and storage of personal information. These principles do not prevent a carer, family member or friend from passing on information that is not personal information about a person, to that person's health care

provider, including to a treating GP, psychiatrist or psychologist.

The NSW Health Privacy Principles state that an organisation must only collect health information about a person from that person, unless it is unreasonable or impracticable to do so.

Observations about a person's behaviour and how they interact with other people may be vital to the assessment of their mental state. Without such information mental health assessments often could not be made. Even if some of this information is personal information, collecting it from family, friends or others (if the information is relevant to a person's mental health assessment or future care), would be reasonable under the Health Privacy Principles.

However, information such as diagnoses, treatment and the contents of assessments and reports remain confidential, and this can create a problem for establishing an effective and appropriate continuing relationship between family members and friends and the treating teams where the person has not consented to those family members or friends having access to their confidential health information.

9B.2.3: Establishing a relationship with the health care provider

Health care providers often get lots of questions from people about their family members or friends who are in hospital or being treated in the community. Health care services and their staff can get frustrated if different members of the family ring to give or find out information. It is a good strategy for the carer, family members and friends to agree on one contact person and tell the health care provider's staff of this decision.

If you are frustrated by reluctance from a health care provider to receive information about your friend or family member, you could write to the Medical Superintendent/ General Manager/ Practice Manager of the health care provider, and ask in your letter that the information you are providing be passed on to the treating team and be placed on the person's medical file.

9B.3: Children and adolescents who are carers for a person with mental illness

Sometimes a person under 18 will find themselves being the carer for a person with mental illness. Even if they are not the person who is responsible for the day-to-day care of a parent, brother or sister or other family member, young people sometimes find themselves as the person who takes the family member to a GP or emergency department, often when the person is in acute phase of their mental illness.

Although there is nothing in the law to stop a young person being dealt with the same way as an adult carer, young people often find they are not listened to when they are advocating for the rights and wellbeing of their family member in this situation.

If you are a young person and are responsible for the care of a family member with mental illness, you could ask your family member or their GP, psychiatrist or caseworker to give you a letter explaining this situation. A copy of the letter could then be provided if a health care provider does not take you seriously in discussions about an admission, treatment plans or discharge plans, etc.

There is nothing in the *Mental Health Act 2007* (NSW) that [stops a person with mental illness from nominating someone under 18 as their Primary Carer](#).

Young people needing support in this situation could:

- Contact [Children of Parents with a Mental Illness \(COPMI\)](http://www.copmi.net.au/) at <http://www.copmi.net.au/>
- check out the [SANE Australia itsallright website](http://www.itsallright.org/) at <http://www.itsallright.org/>
- [click here to go to the page of the Manual that lists other support services](#)
- read the NSW Mental Health Association's fact sheet, ['When your parent has a mental illness' that can be downloaded from this link page by clicking here](#).

9B.4: Getting your family member or friend to seek treatment

If your family member or friend with mental illness is over 16 years old then, even if you think they are in an acute phase of mental illness, it may be hard to get them to seek treatment if they don't want to.

If the person sees a GP for their general health care, that GP should not talk to you about that person's current health or treatment unless you have their express consent. The obligations of confidentiality between a health care provider and their patient and privacy principles don't, however, stop you telling a health care provider what you have observed about a family member or friend's behaviour.

If you approach a health care provider with such information, it is important that you clearly state that you don't want to breach privacy or confidentiality, but you want to give them information that may be important to the treatment and care of your family member or friend.

In this situation, the health care provider may talk to your family member or friend, but cannot tell you of the outcome of this without their patient's consent.

Be aware that the information you provide may directly or indirectly lead to your family member or friend being 'scheduled' as an involuntary patient.

If you are really worried that your family member or friend may, because of their mental illness, be at risk of harming themselves or others, you could alert the local Acute Care Team or, if a crime may be committed, the police. However, involving the [Acute Care Team](#) will make compulsory detention of them in a hospital as an involuntary patient more likely. This also means police are likely to become involved.

Involving the police may result in your family member or friend being charged with a criminal offence, with no guarantee that they will get treatment in a hospital and no guarantee that they will get bail. These are possible outcomes only.

In all these situations, it is very unlikely that your family member or friend will remain unaware that you spoken about their behaviour to the health care provider, Acute Care Team or police. This may have a serious effect on their relationship with you.

Other than doing nothing, a concerned carer may need to contact the person's health care provider, the Acute Care Team or police as the only options if an adult does not voluntarily seek help.

9B.4.1: What if my family member or friend is sent to prison

People with mental illness in prison, including people who haven't yet been to court for the hearing of criminal charges, should get treatment for their mental illness. NSW prisons have an intake process that looks for signs of mental illness. Sometimes this is the first time that some people are treated for their mental illness.

There is very restricted access to psychological services and counselling in NSW prisons. Treatment for mental illness, as with other public psychiatric services in NSW prisons, is generally medication-based treatment. Sometimes treatment includes psycho-education and skill enhancement.

9B.5: Having a family member or friend with mental illness admitted to hospital

There are different admission procedures for private and public psychiatric hospitals and units.

The admission procedure for a private psychiatric hospital is the same as admission to a private general hospital or clinic, that is, a private doctor must initiate the admission. For more about admission to private hospitals, click [here](#).

If a private doctor is approached, they may decide to write a certificate to admit your family member or friend as an involuntary patient if they meet the definition of mental illness under the *Mental Health Act 2007* (NSW). If you don't want this to happen, you and your family member or friend should make it clear they want to be admitted as a voluntary patient. If the doctor ignores this and starts the involuntary admission process, there is nothing to legally stop them as long as your family member or friend fits the definition of mental illness under the *Mental Health Act 2007* (NSW).

For more about admission to a public hospital or mental health facility, click [here](#).

9B.5.1: Admission to private hospitals

If you want a person to be admitted to a private psychiatric hospital or clinic, this has to be arranged through a private doctor, who will almost always be a private psychiatrist who treats patients at that hospital or clinic.

If the person does not want to be admitted to hospital and won't consent to be a patient, then admission to a private hospital is effectively not an option. This is because, such an admission would have to be involuntary and no private hospitals have yet been listed ('gazetted') under the *Mental Health Act 2007* (NSW) as being permitted to schedule and treat involuntary patients.

Private hospitals are also unlikely to admit or retain as a patient a person who is seen as disruptive to other patients' peace and quiet. This effectively means this option is not available for many carers whose family member or friend is in acute phase of their mental illness, even if the person has private hospital insurance.

9B.5.2: Admission to public psychiatric hospitals and units

If you want someone admitted to a public psychiatric hospital or unit, you could speak to their treating GP and/or psychiatrist. Depending on bed availability, they may be able to arrange, if the person with mental illness agrees, a voluntary admission.

It is never possible for a carer to ensure that a person admitted as a voluntary patient is not made involuntary. Even if a person is a voluntary patient, the *Mental Health Act 2007* (NSW) allows that status to change quickly and without notice to the patient or carers. (Change of status has to be notified to Primary Carers but only after the change has happened). The [legal process to make a patient involuntary](#) begins with the change of status and carers are allowed to express their views in this process to the decision-maker. However, the reality is that the decision-maker (the Mental Health Review Tribunal) rarely discharges patients under the Act and they cannot make a hospital accept a patient as a voluntary patient.

A carer cannot insist that a patient be made an involuntary patient if they are not found to be mentally ill under the *Mental Health Act 2007* (NSW).

There are several ways you as a carer could try to have a person admitted to a public hospital or mental health care facility, either as a voluntary patient or an involuntary patient:

- [through a GP or other medical practitioner](#)
- [through an Acute Care Team](#)
- [through the police](#)
- [through the Ambulance service](#)

If you are worried that a person you care about may be violent if they are discharged or given leave, you may need to take action. To find out more, click [here](#).

9B.5.3: Admission through a GP or other medical practitioner

The first step in the process of admitting someone as an involuntary patient does not have to involve a psychiatrist. A GP is able to begin the process. However the assessment document (or Form 1 or 'Schedule') requires whoever is writing it to actually examine the person and report on their mental condition, including risk of harm factors at the time of the assessment.

If a person is reluctant to go to a GP, then this option may not be available.

Even if the person gets to a doctor, and the doctor completes a Form 1 saying the person is mentally ill under the *Mental Health Act 2007* (NSW), there may still be a need to call the police or the ambulance service if the person will not agree to go to hospital.

9B.5.4: Admission through the Acute Care Team

Members of the Acute Care Teams can visit a person in their home and make an assessment of that person's mental health and care needs. If you think a person you care for is of risk of self-harm or a risk, particularly a physical risk to you or other persons, then you should consider contacting the Acute Care Team and giving them as much detail as possible about the potential risk(s) involved. Without this information the Acute Care Team might not think

involuntary hospitalisation is either possible or appropriate.

The Acute Care Team can, if necessary, initiate the process of involuntary treatment. However, if the person is reluctant and unwilling to go to hospital, the Acute Care Team is likely to contact the police to get the person to hospital.

If you ring the emergency numbers below you will be put in touch with someone from your local Acute Care Team from Community Mental Health.

The 24-hour emergency mental health numbers in NSW are:

Northern Sydney/Central Coast Mental Health Area Health Service

Northern Sydney – phone: 1300 302 980*

Central Coast – phone: (02) 4320 3500

South Eastern Sydney/Illawarra Mental Health Area Health Service

Phone: 1300 300 180*

1300 552 289*

Sydney South West Mental Health Area Health Service

Phone: 1300 787 799*

Sydney West Mental Health Area Health Service

Phone: (02) 9840 3047

1800 650 749*

Greater Southern Mental Health Area Health Service

Western – phone: 1800 800 944*

Eastern – phone: 1800 677 114*

Greater Western Mental Health Area Health Service

Central West – phone: 1800 011 511*

Far West – phone: 1800 665 066*

Hunter New England Mental Health Area Health Service

Hunter – phone: 1800 655 085*

New England – phone: 1300 669 757*

North Coast Mental Health Area Health Service

Phone: 1300 369 368*

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) and to Local call numbers (numbers starting with 13 or 1300) are charged to the caller at the usual mobile rate.

9B.5.5: Admission through the police

If you are in danger from a friend or family member because of their mental illness, calling the police may be the only option available. If the person is committing an offence (assault or damaging property are criminal offences) then the police may also charge the person with a criminal offence.

If the person is merely being a nuisance, but is displaying psychotic behaviour, the police are likely to exercise their powers to forcibly take a person to psychiatric hospital or unit. If you call the police they may refer you to the Acute Care team if they don't think there is sufficient need for police involvement. If you are in immediate risk of harm or the person is expressing suicidal thoughts, then it is important to give the police every possible detail of these circumstances. Failing to provide vital information might lead to the police deciding that there is no immediate serious risk of harm.

9B.5.6: Admission through the Ambulance Service

Ambulance Officers have powers to take a person to a psychiatric hospital or unit against their will.

If urgent physical treatment is required (for example, after an attempted suicide), then you should immediately call 000 and asking for an ambulance. The ambulance officers can then exercise their powers if required.

If no physical treatment is required and there is no immediate risk of harm, you should contact the Acute Care Team. If there is any risk of harm, the police are likely to have more experience in dealing with such a situation.

9B.5.7: If violence is feared on discharge or leave from hospital

Reasons that you as a carer might want your family member or friend made an involuntary patient might include that you want the person to get the best treatment and care and you are in fear of physical violence from that person if they stay at your home or near you.

If you fear violence or even emotional harm, it is important to give the hospital and/or the treating doctors this information. Risk of harm to others is an important element in the definitions of mental illness and mental disorder in the *Mental Health Act 2007* (NSW) and this information could make the difference to whether a person is made an involuntary patient or not.

If you are not the Primary Carer under the *Mental Health Act 2007* (NSW), you do not have a right to know when a patient is on leave or discharged. In this situation you are advised to contact the hospital or unit concerned, and tell them your fears. It is a good idea to do this by writing to the Medical Superintendent and the treating team.

If you are the Primary Carer for a patient under the [Mental Health Act 2007 \(NSW\)](#), you must be told when that patient is discharged, given leave, fails to return from leave or changes status from involuntary to voluntary. This doesn't have to happen before the change, you can be told after the event. However, the *Mental Health Act 2007* (NSW) also provides for Primary Carers to be involved in treatment and discharge plans. The reality is the more contact you have with the hospital, whether you are a Primary Carer or not, the more chance you have of knowing about pending discharge, leave or change of status.

Other possible protections are through the police and by obtaining an apprehended violence order (AVO) through your nearest Local Court. Click here for the Legal Aid NSW information page on [Apprehended Violence Orders](#).

9B.6: Helping your friend or family member to challenge medication or treatment decisions

Carers often feel they need to question or perhaps even challenge the health care or treatment being given to their friend or family member.

[If you have concerns are about past care or treatment, then using one of the more formal complaint options](#) may be appropriate.

If your concerns are about current care or treatment, formal complaint processes are less likely to be effective because the health care provider has a right to respond to any such complaint, which can take time. Carers sometimes fear that formal complaints will lead to retribution against their friend or family member. Although such retribution may not be as common as people believe, there can be no guarantee that it won't happen.

In some regional and remote communities, and particularly in the public mental health system, taking your family member or friend away from one particular health care practitioner or provider may leave few or no real treatment options. You may feel your only choice is to negotiate a change of treatment with the existing health care practitioner or provider.

[Part 3 of the Manual discusses second opinions](#). If you can get a second opinion, this can help to identify alternative treatment options to the current health care practitioner or provider. This can be the case even if the second opinion is from a health care practitioner whom your friend or family member cannot regularly or easily access for day-to-day treatment.

No one can force a doctor to change a diagnosis or a medication decision. However, no one (with the clear exceptions in the *Mental Health Act 2007* (NSW) about involuntary patients in hospitals and people on Community Treatment Orders (CTOs)) can force a person to take medication or have treatment he or she does not want. Because of this, conflict between doctors and their patients or between doctors and carers are most likely to be resolved by negotiation and compromise.

For more about negotiating a change of treatment with your friend or family member's GP, click [here](#).

For more about negotiating a change of treatment with your friend or family member's private psychiatrist, click [here](#).

9B.6.1: Negotiating change of treatment with GPs

As a carer, you may be asked by your family member or friend to help them challenge a current treatment or medication plan.

General practitioners (GPs) often have input to the treatment of patients under the care of Community Mental Health services if they are the main practitioner prescribing medications to those patients. GPs may be reluctant to change medication that was originally prescribed by a psychiatrist. In this situation it is probably better to approach the psychiatrist for a review of medication.

If you need to talk directly to a GP about a family member or friend, unless a strong relationship has already been built with the GP, the GP may be reluctant and should not talk to you without that person being present or having given their consent. If your family member or friend agrees to you attending a consultation, it is advisable to make a longer appointment with the GP.

With their patient present, the GP is likely to feel freer to discuss otherwise confidential matters with you, particularly if the patient clearly indicates they consent to this.

It is best to prepare, before the appointment, a list of things you and your family member or friend want to discuss about their care and treatment.

You can discuss with the GP the possibility of a second opinion or referral to a psychiatrist. Unless you specifically tell the GP about any financial constraints or difficulties with travel, he or she may make a referral to a specialist that your family member or friend can't afford to get to because of location. There are sometimes closer or less expensive alternatives (perhaps through Medicare) that the GP is aware of but might not necessarily refer to, unless you make the situation clear.

If, after these discussions, your family member or friend is still not happy with the treatment or medication, the only real alternative will be seeing another GP or a psychiatrist. You and your family member or friend should think carefully about this before making such a decision. A new GP or psychiatrist may be strongly influenced by previous decision-making and diagnoses, and you may not achieve any change to the treatment or medication being given to your family member or friend.

The Health Care Complaints Commission has an information page called [Resolving Concerns About Your Health Care](#), which provides some useful tips about dealing with and negotiating with healthcare professionals.

9B.6.2: Negotiating a change of treatment with private psychiatrists

[The suggestions about negotiating with GPs](#) generally apply to private psychiatrists except that you are probably going to find it more difficult and more expensive for a private psychiatrist to set aside the time to talk to you if you are their patient's carer. They may also be more reluctant to devote time they have set aside for their patient to a discussion with you.

You could try writing to the psychiatrist in this situation, if possible with something in writing from your family member or friend saying that they agree to the psychiatrist discussing their confidential treatment information with you. In that letter you could set out your concerns as briefly as possible (no more than two pages typed) and contact numbers asking that the psychiatrist contact you.

If this does not work, you could:

- use the formal complaints mechanisms, such as the [Health Care Complaints Commission \(HCCC\)](#) (this can result in local resolution or conciliation); or
- find an alternative healthcare practitioner (which may be another psychiatrist, a psychologist or a GP).

The Health Care Complaints Commission has an information page called [Resolving Concerns About Your Health Care](#), which provides some useful tips about dealing with and negotiating with healthcare professionals.

9B.7: Helping a friend or family member to be discharged

Carers sometimes want their friend or family member to be admitted to hospital. Sometimes, however, carers don't think a psychiatric hospital is the best option and want to get them discharged from the hospital.

The options for seeking discharge of an involuntary patient are:

- [A mental health inquiry by a single member of the Mental Health Review Tribunal](#)
- [A decision of an Authorised Medical Officer](#)
- [A request from the Primary Carer](#)

9B.7.1: The mental health inquiry

Whenever a person is made an involuntary patient on the basis of mental illness under the *Mental Health Act 2007* (NSW), there is a 'mental health inquiry' done by a single member of the NSW Mental Health Review Tribunal 'as soon as practicable'. (This does not apply to a person who is 'mentally disordered', who can only be kept in hospital for three days against his or her will).

The single member of the NSW Mental Health Review Tribunal usually holds mental health inquiries under the *Mental Health Act 2007* (NSW) at the public psychiatric hospitals and units once every two weeks. This means that patients may wait up to 20 days to see the Tribunal member. Most of the mental health inquiries are held by video conference.

If a family member or friend nominates you or you are deemed to be their Primary Carer under the *Mental Health Act 2007* (NSW), then you have to be told of the time and place of the mental health inquiry. Patients also must be told in advance, with basic written information about their rights.

Mental health inquiries are usually open to the public. The inquiry is open to family members or carers who want to have their say about whether a patient should be made an involuntary patient. However the Tribunal may, in very limited circumstances, hold the entire or part of the hearing in private. In these circumstances, you should request the opportunity to address the Tribunal on your concerns about admission (or possible discharge) before the Tribunal closes its doors.

However, if you are the Primary Carer under the *Mental Health Act 2007* (NSW), you may also want to try to persuade the Tribunal to allow you to remain and be part of the otherwise closed inquiry. The person that the inquiry is about (the patient/consumer) or their legal representative should not be excluded from the inquiry.

The Tribunal member can discharge a person to the care of a family member if he or she determines that the person is mentally ill under the *Mental Health Act 2007* (NSW). This is very unlikely to happen unless there is verified information about viable immediate alternative care and treatment before them. This means, if you want your family member or friend to be discharged into your care then you need to have a plan for their care and treatment in the community.

For more about preparing for the mental health inquiry, click [here](#).

9B.7.2: Preparing for the mental health inquiry

If your family member or friend is legally represented and you want them discharged, it is essential that you make contact with their lawyer early and make your views known before the mental health inquiry takes place. [Click here to find out more about how to get legal representation for your family member or friend](#).

The following are likely to be relevant to the mental health inquiry:

- [whether or not there is a less restrictive alternative form of care, treatment and control](#)
- [whether or not your family member or friend has adverse \(bad\) reactions to particular treatments](#)
- whether or not your friend or family member poses a risk of harm because of mental illness as defined in the [Mental Health Act 2007 \(NSW\)](#)

Arguments about a less restrictive alternative form of treatment or about a lack of risk of harm are much more likely to succeed in having a patient discharged, than trying to convince the NSW Mental Health Review Tribunal member that the hospital's diagnosis is wrong.

If you don't think you can provide this information at short notice you could ask the Tribunal to adjourn (delay) the inquiry or ask for a very short involuntary order, so that you can present more information to the Medical Superintendent or the NSW Mental Health Review Tribunal at a later date.

If you can't get to the hearing, you can still provide your views to the inquiry. For more about this, click [here](#).

9B.7.3: Alternative treatment, care and control

Your willingness to help with your family member or friend's immediate care and treatment is vital information for their lawyer to have in preparing for the mental health inquiry by the single member of the NSW Mental Health Review Tribunal.

It is essential to give the lawyer detailed proposals for immediate treatment outside hospital. This is because before the Tribunal member can make an involuntary treatment order she or he must be satisfied that there is no other form of care treatment and contract that is less restrictive.

It is probably not enough to have a first appointment with a private psychiatrist lined up for some time in the future. What the Tribunal member will want to know is what care and treatment is available if the patient is immediately discharged from the hospital.

If your family member or friend does not have a lawyer, at the beginning of the inquiry you should make it clear to the Tribunal member that you want to provide information and your views about the patient's care and treatment to the inquiry. You should also let the hospital know before the inquiry that you want to actively take part in the inquiry.

If you don't have independent written verification of your plans for care and treatment of your family member or friend in the community, you should give the hospital advance notice of what you are going to propose. Far from being disadvantaged by 'showing your hand too early', there is much more chance of early discharge if the hospital is able to discuss possible care and treatment with the community healthcare provider(s) you propose to have involved in the community treatment and care of your family member or friend. Partly because of the pressure on available beds, hospital staff are less likely to want to keep a person in hospital if the person does not want to be a patient in their hospital, you as the carer support this and there is workable alternative care.

However, if the alternatives presented at the inquiry are vague and the hospital argues they are not workable, then it is unlikely the Tribunal member will discharge your family member or friend on this basis. Social workers employed by the hospital are often active in providing information about alternative care and accommodation to mental health inquiries and can be a useful point of contact about these issues.

9B.7.4: Adverse reactions to particular treatments

Relevant to the question of possible alternative care is the question of side effects to medications. Most of the psychotropic medications prescribed for mental illnesses have side effects. However, medications affect different people in different ways.

Questions about proposed medication can be asked at the mental health inquiry.

Independent written evidence about your friend or family member's particular reaction to certain medication may be presented as relevant information supporting your argument that a less restrictive alternative to hospitalisation is more appropriate.

A Primary Carer has a right of know the details of the medication being given to a patient under the *Mental Health Act 2007* (NSW).

9B.7.5: Risk of harm and a mental illness

Even if you and your friend or family member don't think that he or she is mentally ill as defined in the *Mental Health Act 2007* (NSW), you are likely to find it very difficult to challenge the hospital's diagnosis unless you have a very recent alternative diagnosis in writing from another health care professional (preferably a psychiatrist or a psychologist). The NSW Mental Health Review Tribunal members holding the mental health inquiries don't generally have medical qualifications so will need independent evidence to support a different diagnosis.

Because part of definition of mental illness under the *Mental Health Act 2007* (NSW) is about risk of harm to the patient themselves or others, you could present information to the Tribunal member about why your friend or family member does not present such a risk. Again the question of risk may be linked to who will be with the person if and when he or she is discharged and what treatment will be available, as well as the likelihood of the person complying with this treatment, so that any possible risks are minimised.

9B.7.6: If you can't be at the inquiry in person

If you cannot get to a mental health inquiry, you can put your views and any other information in writing to the NSW Mental Health Review Tribunal (MHRT).

The NSW Mental Health Review Tribunal is happy to get your written views and information. The MHRT can be contacted at:

Street address: Building 40, Digby Road
Gladesville Hospital
GLADESVILLE NSW

Postal address: PO Box 2019
BORONIA PARK NSW 2111

Phone: (02) 9816 5955
Freecall: 1800 815 511*
Fax: (02) 9817 4543
E-mail: mhrt@doh.health.nsw.gov.au

If you can't be at the inquiry, information you want to present to the mental health inquiry can be presented to the inquiry by the hospital, the patient themselves or their legal representative. If you give your written information to the hospital before the inquiry takes place, it should be included with the other written material (reports, medical records, assessments, etc) presented to the Tribunal member at the inquiry. Make sure, if you write something, that you make it clear, including on the document itself, that you want it to be made available to the Tribunal member at the inquiry.

If your family member or friend is legally represented you should contact that legal representative, either through speaking to them or by writing to them. You may also give this information to the hospital, preferably in writing.

It is strongly recommended that if you can't attend the inquiry in person or by phone, and the patient will not be legally represented at the inquiry, that you put your views and other information in writing to ensure the Tribunal member has that information and those views from you directly.

9B.7.7: Discharge by an Authorised Medical Officer

Under the *Mental Health Act 2007* (NSW), an Authorised Medical Officer (AMO) (previously called the Medical Superintendent) has power to discharge an involuntary patient even if the person has not been to a mental health inquiry, or after the NSW Mental Health Review Tribunal (MHRT) has made an order to

make the person an involuntary patient. If the Authorised Medical Officer is asked to discharge a person and this request is refused, that person can ask the Mental Health Review Tribunal to review this decision.

An involuntary patient can ask the Authorised Medical Officer to discharge them. There is nothing in the *Mental Health Act 2007* (NSW) preventing someone such as a legal representative or a carer making this request on the patient's behalf.

[The information that could be provided to the Authorised Medical Officer \(or the MHRT on review\) are the same as for the mental health inquiries :](#)

- [Whether there is a less restrictive alternative plan for care and treatment \(and control if necessary\) immediately available](#)
- [Whether the patient's present condition presents a risk of harm to his or herself or others](#)
- Whether the clinical diagnosis of mental illness is valid
- [The possible adverse side effects of any medication proposed](#)

Like all NSW Mental Health Review Tribunal (MHRT) hearings, a patient has a right to be legally represented when the Tribunal is reviewing a decision by the Authorised Medical Officer. Click [here](#) to find out more about how to get legal representation for your family member or friend.

9B.7.8: Request for discharge by Primary Carer

The *Mental Health Act 2007* (NSW) specifically says that the Primary Carer of an involuntary patient has the right to make an application to have that patient discharged.

The *Mental Health Act 2007* (NSW) allows the Authorised Medical Officer to discharge a patient after:

- the Primary Carer gives the Authorised Medical Officer a written undertaking (promise) that the person will be properly taken care of; and/ or
- the Authorised Medical Officer is satisfied that adequate measures will, 'so far as is reasonably practicable', be taken to prevent the patient or person from causing harm to himself or herself or others.

If such a request is refused, the Primary Carer can apply for a review by the NSW [Mental Health Review Tribunal](#) .

9B.7.9: Other options for trying to get your family member or friend discharged

There are legal avenues for appealing decisions of the NSW Mental Health Review Tribunal.

If you or your family member or friend are not happy with the decision of the Tribunal member at the mental health inquiry, an application by the Primary Carer or the person with mental illness themselves can be made to the [Authorised Medical Officer asking for discharge](#). If this is refused, they can then ask for a review by the full Mental Health Review Tribunal.

You can appeal a decision of a Tribunal member at a mental health inquiry to the Supreme Court.

You can appeal a decision of the full NSW Mental Health Review Tribunal to the Supreme Court.

Such options can cost a lot, as it is important to have a lawyer to represent your friend or family member in an appeal to the Supreme Court.

Your family member or friend may be able to get legal aid for an appeal, and this will cover their own legal costs of the process. However, the Supreme Court can order that you or your family member or friend have to pay the legal costs of the other party if you are unsuccessful. (No legal costs orders are made in mental health inquiries or in reviews by the NSW Mental Health Review Tribunal.)

It is good to keep in mind that involuntary patients can and often are either discharged or agree to be voluntary patients after a short time in hospital. Discharged patients are often put on [Community Treatment Orders](#).

Therefore, if you have fresh information, in particular if an alternative form of care and treatment has become available, you can always put this information to the patient's treating team and/or the Authorised Medical Officer.

Neither the NSW Health Care Complaints Commission nor the Official Visitor has the power to overturn or review decisions of a visiting Magistrate or the NSW Mental Health Review Tribunal

9B.7.10: Challenging the quality of care of an involuntary or voluntary patient

You can complain to the [Health Care Complaints Commission \(HCCC\) about the quality and nature of treatment and standard of care received by a person who is a voluntary or involuntary patient in a hospital](#) .

The [Official Visitor](#) is another body that you can contact to question the standard and quality of care given to a patient in a public psychiatric facility. The Official Visitor cannot review or overturn decisions made under the *Mental Health Act 2007* (NSW).

Both the Health Care Complaints Commission and the Official Visitor make a distinction between the quality of the care received in a psychiatric hospital or unit and the process that gives those facilities power to exercise 'care, treatment and control' over individuals under the *Mental Health Act 2007* (NSW). Both see these decisions as reviewable only by the Authorised Medical Officer or the Mental Health Review Tribunal.

9B.8: Helping your family member or friend to challenge a Community Treatment Order

There are way to get a review or appeal of a decision of the [Mental Health Review Tribunal to put someone on a Community Treatment Order](#).

If you are the Primary Carer under the *Mental Health Act 2007* (NSW), you should be given the opportunity to give your views about the contents of a care plan proposed to the Mental Health Review Tribunal before the Tribunal decides whether or not to put your friend or family member on a Community Treatment Order (CTO).

Under the *Mental Health Act 2007* (NSW), a person has a right to have a lawyer represent them before the Mental Health Review Tribunal if it is proposed to make an order to put them on a Community Treatment Order (CTO). Representation is available through the Mental Health Advocacy Service at mental health inquiries but is not usually available when the full NSW Mental Health Review Tribunal makes or reviews CTOs.

You, as a carer can also present your views and relevant information to the Tribunal either in person or in writing.

If a single member of the Mental Health Review Tribunal is making a first Community Treatment Order he or she must determine whether or not the person is mentally ill under the *Mental Health Act 2007* (NSW). However, the full Mental Health Review Tribunal does not have to be satisfied that a patient is mentally ill under the *Mental Health Act 2007* (NSW) before making or renewing a Community Treatment Order (CTO). This means that issues relating to risk of harm are not specifically relevant to Tribunal hearings about CTOs. The existence or otherwise of a mental illness remains relevant because logically, if there is no mental illness, then there is nothing to treat under a CTO.

Challenging a Community Treatment Order can be difficult, partly because a CTO is seen as less restrictive than hospital care. If the terms of the Order are particularly hard to comply with and/or potentially invasive of a person's personal space, then it is more likely that the Tribunal will consider revising the conditions in a Order or cancelling it.

Issues such as the side effects of medication and the particular dosage of medication can also be raised, but will have much more chance of success in getting the Mental Health Review Tribunal to vary a Community Treatment Order if there is a written opinion from a GP or preferably a psychiatrist questioning the terms of the current Order. [For many practical reasons this may be difficult to obtain, particularly if your or your family member or friend have to pay for such a report \(usually such 'medico-legal' reports are not claimable under Medicare\)](#) . It is not the practice of the NSW Mental Health Review Tribunal to order alternative or second opinion reports, but when the Tribunal is making a decision about a Community Treatment Order it must include an independent psychiatrist.

Disclaimer

- The legal and other information contained in this Section is up to date to **Monday, 2 May 2011**.
- This Manual only refers to the law and practices applying to the Australian state of New South Wales (NSW).
- MHCC does not guarantee the accuracy nor is responsible for the content or the currency of the content of external documents and websites linked to this Manual.

Part 9 Section C : Trusts and special disability trusts

9C.1: Trusts

A legal trust is a relationship of trust and confidence between one party, the trustee, who holds property for the benefit of another party, the beneficiary. The relationship of trust and confidence means the trustee must act in the interests of the beneficiary, and not profit from the position or allow any personal interest to conflict with the interests of the beneficiary.

A trust can be set up in a will; this is called a testamentary trust. If you make a will that includes setting up a testamentary trust, the trust only comes into effect after you die.

A trust can also be created to come into effect in your lifetime and this is called an *inter vivos* trust and its terms are set out in a trust deed.

Trusts, whether testamentary or *inter vivos*, are very useful mechanisms for protecting the financial interests of the person you care for. Assets such as real estate or money can be placed in a trust with the trustee managing the assets for the benefit of the person for whom you care. This can be very helpful for people who are not able to look after their own financial affairs.

The terms and conditions of the trust can be personalised to suit the needs of the beneficiary. Some people like to give the trustee the discretion to use both the capital and income generated from the capital (such as interest or rent) for the beneficiary while others prefer to restrict payments from the trust to income so that when the beneficiary dies there is a capital sum or other assets remaining in the trust that will pass to other family members or charities.

9C.2: Special Disability Trusts

If you are on an Age Pension from Centrelink or a Department of Veterans Affairs (DVA) Service Pension, you can make private financial provision for the future care and housing needs of a person with a 'severe disability' through a 'Special Disability Trust'. This is a Commonwealth Government initiative that allows you, if you are eligible for one of these pensions, to give money to a complying Special Disability Trust and receive up to the value of \$500,000 (combined) exemption from the deprivation provisions.

To find out more about this scheme, contact **Centrelink's Special Disability Trust** Team by:

Freecall: 1800 734 750*
Telephone: (08) 9237 1804

E-mail: cao.west.w@centrelink.gov.au

Postal address: GPO Box T1642
PERTH WA 6845

If you are thinking of setting up any type of trust you should get advice on the taxation implications. Accountants and lawyers often provide this sort of advice.

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

9C.3: Wills for people lacking testamentary capacity - known as statutory wills

For those people lacking testamentary capacity (that is, people who don't have the legal capacity to make a will), the Supreme Court of NSW can authorise a will to be made, altered or revoked (cancelled) for that person. The Court may do this for minors and adults, for people who have never had capacity, and for people who had capacity but have lost it.

Any person can make the application on behalf of the person lacking capacity but experience indicates most applications are made by the person's spouse, family member or guardian. To make sure that the applicant is not promoting their own personal interest, the Court will firstly assess whether or not the applicant is an appropriate person to make the application.

It is up to the applicant to draft a will that is presented to the Court for approval.

A court-authorized will is an alternative to dying without a will or dying with an inappropriate will, for example, where a will was not kept up to date due to loss of capacity.

If you are thinking about making an application for a court-authorized will you should get advice from a lawyer or trustee company.

To find out about getting legal advice, click [here](#).

Disclaimer

- The legal and other information contained in this Section is up to date to **Sunday, 6 February 2011**.
- This Manual only refers to the law and practices applying to the Australian state of New South Wales (NSW).
- MHCC does not guarantee the accuracy nor is responsible for the content or the currency of the content of external documents and websites linked to this Manual.

Part 9 Section D: Rights of carers

9D.1: Anti-discrimination law

It is against the law in NSW to discriminate against a person because of his or her responsibilities as a carer, including as a carer of a person with a mental illness. This particularly applies to discrimination in the workplace.

The **NSW Anti-Discrimination Board** has a fact sheet that sets out your rights as a carer. [Click here for the fact sheet](#).

Please note that the definition of carer under the *Anti-Discrimination Act 1977* (NSW) is much narrower than the definition of carer used elsewhere in this Manual.

The *Anti-Discrimination Act 1977* (NSW) prohibits discrimination against people who:

- have a legal responsibility for children;
- are the legal guardian of an adult; or
- have an immediate family member who is dependent on them or in need of their care and support.

The fact sheet from the Anti-Discrimination Board lists all of the people considered to be immediate family members under the Act. [Click here for the fact sheet](#).

If you are treated unfairly or discriminated against because of your responsibility to care for a person whose relationship to you is not included in the list of 'immediate family members' in the *Anti-Discrimination Act 1977* (NSW), the law will not apply.

For more about the Anti-Discrimination Board, click [here](#).

For information about how anti-discrimination law protects people with a mental illness against discrimination, click [here](#) and in particular from discrimination in employment, click [here](#).

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Part 9 Section E: Getting support as a carer

For information about general support services for carers, click [here](#).

For information about support services for young people who are carers, click [here](#).

9E.1: General support services for carers

There are a number of information and support services for carers of people with mental illness. The following are a few examples. You can visit their websites for more information about what they do and how they can help. Many of these websites also have information about other services and programs that may be useful to you.

[ARAFMI](#) provides information and support for those with family members and/or friends with mental illness or disorder.

[Commonwealth Respite and Carelink Centres](#) provide free and confidential information on support services available locally and within Australia for both people with mental illness and their carers.

[Mental Health Respite Program](#): provides a range of flexible respite options for carers of people with mental illness or intellectual disability. For more information or to find out how to access the program, visit the above website or call 1800 059 059.

[Sane Australia](#) conducts programs and campaigns to improve the lives of people with mental illness, their family and friends. Sane Australia also provides a helpline that can be accessed by telephone or online: Phone: 1800 187 263* or click here to go to the [SANE Helpline](#) webpage.

[Schizophrenia Fellowship of NSW Inc](#) has a number of programs that assist carers and families of people with mental illness. The Schizophrenia Fellowship also has a telephone information service that can be contacted on 1800 985 944*.

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

9E.2: Information and support services for young carers

This page lists some services and resources that are specifically for young carers:

[Kids Helpline](#) provides counselling and referrals for young people 25-years-old and under. It has a 24-hour telephone helpline that can be contacted on 1800 55 1800*. You can also get help by e-mail or by using the Kids Helpline web counselling service. [Click here to find out more](#).

[Young Carers NSW](#) provides information on support and counselling services, has a section for young carers with families from non-English speaking backgrounds, as well as information for specific age groups.

[Young Carers Australia](#) provides information on how to get help and support, as well as how to deal with young carer-specific situations and associated emotions.

[Children of Parents with a Mental Illness \(COPMI\)](#) provides useful information to people who care for a parent with mental illness.

[Young Carer Program, Commonwealth Respite and Carelink Centres](#): this government initiative aims to provide young carers with a break from caring so they can have time to study. To find out if you are eligible, visit the website or call 1800 052 222* (Monday to Friday, 9:00 am to 5:00 pm).

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Chapter 10 - Complaints and Disputes - Getting help to resolve them

Part 10 Section A : Overview

This section is about how you can resolve your concerns, questions, complaints and claims about treatment and other services you might receive.

[There is information about resolving complaints and disputes generally](#) as well as pages setting about the pros and cons of [making a complaint about health treatment or taking legal action about the treatment you received](#).

[You can then read about specific organisations that deal with complaints](#) and there are links to the pages on complaints options that are available if you are an involuntary patient.

[There is also information about advocacy](#) . That is about who you can get to help you, support you and speak for you if you complain or ask questions about a service or treatment you have received and want this sort of help.

[There is also information about legal advice and legal advocacy](#) . It includes information about the range of organisations that can provide free or low cost legal advice and representation.

There is a section about mediation and what is called 'alternative dispute resolution'. [It outlines ways to resolve disputes outside the courts and the legal system](#).

[There are also practical tips on how to make an effective complaint](#).

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Part 10 Section B : Complaints and disputes

There are many ways that this part of the Manual may be useful to you.

Sometimes you might want to ask questions about something that has happened to you, or you may believe that your rights have been breached by someone, or you have been treated unfairly.

You may also be sued by someone else because they believe that you have infringed their rights or be a party in some other legal proceedings, such as family law proceedings or social security proceedings.

You might find yourself involved in a criminal case, as the person charged, or as a victim, or as a witness in a criminal trial.

You might be a tenant and be in dispute with your landlord.

You may have separated from your spouse and be unable to agree with him or her about who should be responsible for the daily care of your children.

You might have to attend the Guardianship Tribunal either about yourself or about someone close to you.

You might be threatened with the loss of your pension or benefit.

You might be in a work situation and your boss is discriminating against you because you have a mental illness or a physical disability.

In all these situations you are likely to want to either have someone help you with your problem or at least want to tell someone about what has happened to you.

Before deciding what to do and where to go for help it is useful to think about the following questions:

- [What outcome will you be happy with to resolve the complaint or dispute?](#)
- [Was the action you want to complain about unlawful or simply unfair?](#)
- [What information or paperwork do you have that might be relevant or important?](#)

If you have particular complaints or concerns about your medical treatment or treatment in a health service, you can find out more in the separate section on [health complaints and disputes](#).

10B.1: Was the action you want to complain about unlawful or simply unfair?

Sometimes problems can be described as legal problems and you will need a lawyer to help you sort them out. Sometimes the law is unable to help you, but you still need someone to help you with your problem or someone to speak on your behalf ('an advocate').

The answer to whether you need a lawyer or a non-legal advocate or you just need to tell a complaints body can depend on what outcome or result you want from the action you take.

It can also depend on what happened. It could be that:

- [there has been a breach of a law](#)
- [an individual or organisation has failed to meet a standard, or follow a protocol, policy or procedure](#)
- someone's behaviour to you was unfair
- you feel that you have been ripped off by a company that sold you something, like a fridge or a computer, or that provides you with services, such as a mobile phone company
- you have received a letter of demand or similar legal letter demanding payment for something that you have done, such as a letter from the owner of a car if you were involved in a car accident that resulted in damage to the other driver's vehicle
- you are being prosecuted by the police, a government agency (such as Centrelink) or have been sent a notice saying you owe money for a penalty notice or a fine

No matter which of these or any other types of legal or similar problems you have, the best place to start is to get information about where you stand in relation to the issue. [You should think about contacting either an advocacy service](#) or a [legal assistance provider](#) to get that initial advice so you can work out what you can do.

[Before you try to get that advice however, it is useful to spend a bit of time thinking about what outcome will resolve the complaint or dispute from your point of view.](#)

[It is also useful to get together all the information you have about the situation to show to the person or organisation giving you advice.](#)

It is important to note that if there is a legal solution to your problem, [it is likely that you can also complain to the provider of the service and/or a complaints body](#) as well. The outcomes of each process may be different. As well, the timeframes for the matter to be sorted out may also be very different in each process. Each process in itself may also be very physically and emotionally draining.

10B.2: What outcome will resolve the complaint or dispute for you?

You may not know what is possible in terms of outcomes, but it is worth thinking a bit about what will help you feel that the issue is resolved. It might be that you want:

- what happened to you not to happen again, either to you or to anyone else;
- an apology for what happened (either simply a verbal apology from an individual involved in what happened, or a formal written apology from an organisation that you feel was responsible);
- the organisation you feel was responsible for what happened to have better policies and training for its staff to prevent it happening again to you or to anyone else;
- answers to questions about what happened and/or copies of documents or information;
- financial compensation for what happened, either for actual physical injuries, for loss of income (to date or into the future), or for the emotional or other impact on you of what happened.

Usually **if you want compensation** in the form of money, then the only way to get this will be to take legal action. Generally, this means taking legal action in a court. [Some complaints, however, such as complaints of discrimination can result in compensation and are dealt with through less formal processes managed by specialist complaint bodies.](#)

If you do decide you want compensation, you are strongly advised to get a lawyer to give you advice and represent you in the process. Unfortunately, in many areas of the law there are only very limited ways to get legal help without paying for it. There are also time limits that apply, which means that you must start your legal action within set amount of time after the conduct or treatment you are concerned about happened or when you found out about it. Time limits are different for different types of law, but can be as short as a couple of months, 12 months or three years. This means you should get legal advice as soon as you realise you have a problem.

If you just **want answers to your questions** or you just **want an apology** or you **want to stop something happening again**, you may be better off making a [complaint to a complaints body](#) or directly to the organisation that you have a problem with.

Sometimes taking legal action may also give you answers about what happened to you and why you were treated in a particular way, but there are often easier and less expensive ways to find the answers to your questions.

You could make a complaint or ask questions yourself or you may be able to get someone to help you make a complaint. A lawyer could help you make a complaint, but a private lawyer will usually charge you for helping this way. Some Community Legal Centres and advocacy organisations may also be able to help and this is usually free.

Sometimes you can get a friend or relative to help you. Sometimes the organisation you are complaining about has particular people employed to help people with their complaints.

Quite often you have a choice about whether to take legal action or to make a complaint.

Quite often you can do both if you choose. There are benefits and problems with taking legal action or making a complaint. Click [here](#) to see some of these.

10B.3: What information or paperwork do you have that might be relevant or important?

To get the most out of getting advice you should make sure you have prepared for the discussion. [This means thinking about what outcome you want](#) and collecting together the information you have about the situation, whether it is information about something that happened to you that you want advice about or letters or other documents sent to you demanding action by you or something from you (such as payment).

It is also useful to make notes of what happened (whether it was something that happened to you that you want to complain about or you have been sent a letter or document demanding action from you about something you are said to have done), including details of:

- Dates (when it happened)
- What happened
- Who was involved (including their names if you know them)
- What (if anything) you have already done to try to resolve the situation.

10B.4: Benefits and risks of taking action: legal action or complaints

This section compares the benefits and risks or problems with taking legal action to that of making a complaint. Click on the links below to read about them:

- [Benefits of taking legal action](#)
- [The risks or problems of taking legal action](#)
- [Benefits of using a complaint process rather than legal action](#)
- [The risks or problems with using a complaint process rather than taking legal action](#)

10B.4.1: Benefits of taking legal action

- Possibility of getting substantial compensation (money) for what happened.
- Possibility of sorting out (settling) the dispute and avoiding going to court without the anxiety involved in court proceedings.
- If the problem is not resolved and is decided by a court or tribunal, there is a winner and a loser: a decision will be made about what happened and whether or not someone is to be held legally responsible for it.
- Direct contact with the person or organisation you have a problem with is much less than you would have in a complaints process; pretty much everything is done through lawyers.

10B.4.2: The downsides of taking legal action

- Delays in getting the problem or complaint resolved as cases often take several years to get to court.
- You are very likely to have to give evidence and be cross-examined and deal with the very significant stress that goes with this.
- The risk of losing, which can result in having to pay the other party's legal costs.
- Your legal costs (if you have to pay for a lawyer) will often substantially reduce any compensation you get even if you win.
- It is an adversarial process (there is a winner and a loser), and there is a much less chance of your questions being answered voluntarily or fault being admitted with an apology given.

10B.4.3: Benefits of using a complaint process rather than taking legal action

- It usually won't cost anything.
- People and organisations are more likely to apologise or answer questions in a less formal process, especially if the organisation has a policy of 'open disclosure'.
- Complaints can lead to an apology to you or can lead to changes to the systems and processes of the organisation that you are complaining about.
- You may be able to go through the process without having a lawyer involved, although it will be much easier if you have someone, such as an advocate, working with you.
- You may still be able to take legal action if going through the complaint process doesn't resolve the situation.

10B.4.4: The risks or problems with using a complaint process

- You are likely to get less compensation (if any at all) than you might if you went to court.
- It can take a long time for the complaint process to be completed.
- Some people believe that there are no 'winners and losers' in the complaints process, that the emphasis is on avoiding blame.

In some situations you have to go through a complaint process before you can start a legal case in a court. An example of this is discrimination law, where you have to make a complaint to the relevant discrimination commission or board and go through the complaint resolution process before you can take legal action. For more about discrimination law, click [here](#).

It is also important to remember that in the complaints process, the organisation that deals with the complaint can't take sides and can't decide the outcome for you. While courts and tribunals are also not permitted to take sides, at the end of the process, the court or tribunal will decide on the outcome.

10B.5: Breach of the law or breach of standards?

[The differences between laws and regulations on one hand and standards, protocols and policies on the other hand are talked about elsewhere in the Manual.](#)

If a law is broken, it does not always mean that there is a legal action you can take and an outcome that will be available to you. There are sections of the *Mental Health Act 2007* (NSW) that says certain things should happen, but there is no legal remedy if those things don't happen and the Act doesn't create any offence or crime for failing to do what is meant to happen. [The only option in this situation is to make a complaint](#)

Generally speaking, if there were a breach of standards, protocols or policies only, the only option is to use a complaint process.

The major exception to this is if the breach of standards is so serious that it is seen as a 'breach of a duty of care' under the law of negligence.

No matter whether it is a law or a standard that you believe has been breached, the best place to start is to get information about where you stand in relation to the issue. [You should think about contacting either an advocacy service](#) or a [legal assistance provider](#) to get that initial advice so you can work out what you can do.

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Part 10 Section C : Complaints about a health service or your medical treatment

10C.1: Introduction

Sometimes you might want to ask questions about the treatment you got in hospital. Sometimes you might think that the hospital or a particular health care professional has not acted ethically while treating you. Sometimes you might think that the care you got was sub-standard. Sometimes you might have been injured and lost money as a result of sub-standard health care or treatment. You might also think that you will suffer further financial disadvantage or continue to have pain and suffering because of the treatment you got. Sometimes you might think you have been charged too much for a health care service you got.

You might want financial compensation because of what you think was poor treatment or care in a hospital. You might not want any compensation but might want an apology. Sometimes you may want assurance that what happened to you won't happen again to you or anyone else. Sometimes you might simply want someone to listen to your concerns. Sometimes you might simply have questions that you want someone to answer.

To begin with, you probably need to consider whether it would be better to take legal action or to make a formal complaint. For information on this, click [here](#).

10C.2: When to take legal action and when to complain

Sometimes problems can be described as legal problems and you will need a lawyer to help you sort them out. Sometimes the law is unable to help you, but you still need someone to assist you with your problem or someone to speak on your behalf ('an advocate').

The answer to whether you need a lawyer or a non-legal advocate or you just need to tell a complaints body can depend on:

- what happened
- what outcome you want from the action you take
- if there has been a breach of the law
- [whether a standard, protocol, policy or procedure has been not observed](#) .

It is important to note that if there is a legal outcome available for your problem, it is likely that you can also complain to the provider of the service and/or a complaints body as well. The outcomes of each process may be different. The timeframes for the problem to be resolved may also be very different in each process. Each process in itself may also be very physically and emotionally draining.

To find out about what legal actions and complaints processes there are for health care problems, click [here](#).

10C.2.1: Types of legal actions and complaint processes for health service and medical complaints

The options available to you to take action will depend on what happened.

If, for example, you feel that the medical service or practitioner didn't provide medical services to an adequate standard and the treatment you got meant you were injured or your existing condition got worse, you may be able to take legal action in court for medical negligence.

If, on the other hand, you feel that the way people spoke to you was inappropriate or rude or you were exposed to discriminatory attitudes or behaviour, you may be able to make a complaint.

Usually **if you want compensation** (in the form of money) for injuries you have suffered or for future economic loss, then the only way you usually can get this money is taking legal action in the courts.

If you do decide to take legal action, you are strongly advised to get a lawyer to give you advice and represent you in court. A problem you will need to deal with is that in relation to 'medical negligence' cases, there is virtually no legal aid or free legal assistance available. There are, however, some lawyers and law firms that specialise in medical negligence and that may agree to an arrangement whereby you don't have to pay anything for the legal work they do unless you are successful in your claim.

There are also time limits that apply. This means you must start your legal action within a set time period after the conduct or treatment you are concerned about happened or when you found out about it. The time limit differs in different situations, but is usually as short as 12 months or three years.

If you just **want answers to your questions** or you just **want an apology** or you **want to stop something happening again**, you may be better to make a complaint to the [Health Care Complaints Commission](#) or directly to the organisation or person who treated you.

Sometimes taking legal action may also give you answers about what happened to you and why you were treated in a particular way, but there are often easier and less expensive ways to find the answers to your questions.

You could make a complaint or ask questions yourself or you can sometimes get someone to help you make a complaint. A lawyer may help you make a complaint, but a private lawyer will usually charge you a fee for helping this way. Legal aid is not normally available for legal actions in medical negligence cases.

[There are a limited number of non-legal advocates from particular organisations that will help you with specified problems](#). Sometimes you can get a friend or relative to help you. Sometimes the organisation you are complaining about has people employed to help people with their complaints.

Quite often you have a choice whether to take legal action or to make a complaint.

Quite often you can do both if you choose. There are benefits and risks or problems with both options, click on the links below to read about them:

- [Benefits of taking legal action](#)
- [The risks and problems with taking legal action](#)
- [Benefits of complaining rather than taking legal action](#)
- [The risks and problems with making a complaint](#)

10C.2.2: Benefits of taking legal action

- Possibility of getting a lot of compensation (money) for an injury and financial losses linked to that injury.
- Possibility of resolving (settling) the claim and avoiding going to court without the anxiety involved in court proceedings.
- If the problem is not resolved (settled), there is a winner and a loser: the medical service or provider may be found negligent or you may be unsuccessful in proving this.
- Direct contact with the health care provider or health practitioner is much less than you would have in a complaints process: most of the process goes through the lawyers.

10C.2.3: The downsides of taking legal action

- Delays: civil claims for negligence often take several years to get to court.
- It is very likely you will have to give evidence and be cross-examined and this can be extremely stressful.
- If you lose, you are likely to be ordered by the court to pay the legal costs of the medical practitioner or service.
- If you win, your own legal costs will often substantially reduce the amount of compensation that the court orders you to be paid.
- It is an adversarial process (there is a winner and a loser), and there is a much smaller likelihood of questions being answered voluntarily or fault being admitted with an apology.

10C.2.4: Benefits of complaining rather than taking legal action

- Making a complaint to the Health Care Complaints Commission or about discrimination to the relevant body is free.
- Health care providers and health care professionals are more likely to apologise or answer questions in a less formal process, especially if they are part of the NSW public health sector, where there is a policy of 'open disclosure'.
- Complaints can lead to an apology to you or can lead to the medical service or health care provider making improvements to their service and systems.

10C.2.5: Risks and problems with making a complaint

- There is no compensation available at the end of the Health Care Complaints Commission process, except perhaps as part of a complaint referred to conciliation.
- Usually complaints about health care professionals are dealt with as matters about discipline or education of the health care professional. The organisations and people involved may see you as merely an informant or potential witness and not deal with the complaint from your perspective.
- Often it is perceived that there are no 'winners and losers' in the complaints process: the emphasis is often on avoiding blame. (Some people however have an expectation of someone being held responsible when they make the complaint).

10C.3: Breach of Standards, Protocols or Policies

If you just want to complain and get an apology or a change in practice rather than money or if you get legal advice and for some reason cannot take legal action but still want to do something about your concerns, then you may need advice about where to complain. Click [here](#) to for more information.

If your concerns are about your treatment or contact with a health care professional or a health care provider like a hospital or aged care facility, you should ring the Health Care Complaints Commission (HCCC) on (02) 9219 7444 or 1800 043 159* between 9.00 am and 5.00 pm Monday to Friday.

An HCCC Inquiry Officer on this number can give you advice about making a complaint to the HCCC and can help you to do this. The Inquiry Officer can also give you advice about other ways you can ask questions, and raise and resolve concerns about your health care. For further information about the HCCC, please click [here](#).

You can also get advice about your rights in relation to aged care facilities from the [Aged Care Rights Service \(TARS\)](#).

If you are complaining about your treatment or conditions in a public psychiatric hospital or unit you could also contact the Official Visitor. For further information about the Official Visitor and how to make contact, please click [here](#).

Click [here](#) for information about the roles and complaint processes relevant to people with mental illness who are involuntary patients in NSW .

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

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Part 10 Section D : Complaints bodies

There are a number of organisations that have formal authority to deal with complaints and disputes. These include organisations such as the police and

the courts, as well as specialist organisations that deal with particular types of complaints.

The following bodies deal with specific types of complaints and you can follow the links to find out more about what they do.

- [Complaints about treatment or contact with a health care professional or health care provider: the Health Care Complaints Commission.](#)
- [Complaints about treatment or conditions in a public psychiatric hospital or unit: the Official Visitor.](#)
- [Complaints about your treatment or conditions if you are on a Community Treatment Order: the Official Visitor.](#)
- [Complaints about private health insurance: the Private Health Insurance Ombudsman.](#)
- [Complaints about a NSW government department or agency other than one that provides a health service: NSW Ombudsman.](#)
- [Complaints about Aged Care Facilities: Commonwealth Aged Care Aged Care Investigation Scheme.](#)
- [Complaints about health care provided in an Aged Care facility: Health Care Complaints Commission.](#)
- [Complaints about abuse and neglect: Australian National Disability Abuse and Neglect Hotline](#) or the [Health Care Complaints Commission.](#)
- [Complaints about Australian Government-funded disability employment and advocacy services: The Complaints Resolution and Referral Service.](#)
- [Complaints of discrimination or harassment: the NSW Anti-Discrimination Board or the Australian Human Rights Commission.](#)
- [Complaints about information privacy: Commonwealth Privacy Commissioner and NSW Privacy Commissioner.](#)
- [Complaints about the conduct of the NSW Police Force: NSW Ombudsman.](#)
- [Complaints about banks and other financial services providers including credit unions, insurance companies, stock brokers, superannuation funds, investment advisers, etc: Financial Ombudsman Service.](#)
- [Complaints about internet and telephone service providers: Telecommunications Industry Ombudsman.](#)
- [Complaints about energy or water service providers in NSW: Energy and Water Ombudsman \(NSW\).](#)

To find out more about roles and complaint processes directly relevant to people with mental illness in involuntary treatment in NSW click [here](#).

The **Complaints Line** is a comprehensive website that sets out the relevant complaints body for a range of areas in all parts of Australia. [Click here to go to the Complaints Line website.](#)

If you need an interpreter to communicate with any of the complaints bodies, phone the Translating and Interpreting Service (TIS) on 131 450* and give them the details of the organisation you want to speak to. Apart from the local call cost this is a free service.

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) and to Local call numbers (numbers starting with 13 or 1300) are charged to the caller at the usual mobile rate.

10D.1: The Health Care Complaints Commission (HCCC)

The Health Care Complaints Commission (HCCC) can deal with complaints about the standard of care you receive in any hospital or health care services. The HCCC does not have the power to change or vary an order of a court or the NSW Mental Health Review Tribunal (MHRT). Because the *Mental Health Act 2007* (NSW) allows the Tribunal to make an order for you to be kept in hospital against your will and given medication against your will, the HCCC cannot question such decisions.

[Because it looks at standards of care](#), the HCCC can investigate a complaint that the health care or treatment that you got was below the accepted standard.

Complaints to the HCCC have to be in writing, and the time that the HCCC takes to deal with a complaint, (it would usually seek a response to your complaint from the hospital) makes achieving short-term change to your conditions in hospital very difficult.

If your concerns are about your treatment or contact with a health care professional or a health care provider like a hospital or aged care facility, you should ring the **Health Care Complaints Commission**:

Phone: (02) 9219 7444
Freecall: 1800 043 159*
Teletypewriter (TTY): (02) 9219 7555
Fax: (02) 9281 4585
E-mail: hccc@hccc.nsw.gov.au
Website: <http://www.hccc.nsw.gov.au>

Online complaint form: [Click here](#)

Office hours: 9.00am to 5.00pm Monday to Friday
Street address: Level 13, 323 Castlereagh Street (cnr Hay St)
SYDNEY NSW
Postal address: Locked Mail Bag 18
STRAWBERRY HILLS NSW 2012

You will get advice about making a complaint to the HCCC and help to make a complaint if you find it difficult to do so in writing, but you can also get advice about other ways of resolving your complaint or concerns.

You do not have to be a consumer of a health service to make a complaint about that service to the HCCC. A relative or friend can make a complaint about the care and treatment given to another person.

When you put in your complaint, it will be assessed. After assessment it can be investigated further by the HCCC, referred to the Health Conciliation Registry for conciliation, referred to the HCCC's Resolution Service, or referred to another more appropriate complaints body.

The Commission can also refuse to deal with a complaint. Even if the HCCC refuses to deal with your complaint, it will still keep a record of your complaint. Sometimes, if later on there are other complaints about the same health practitioner or health care provider, the HCCC will again look at your complaint.

If you don't agree with the HCCC's assessment decision you can ask for an internal review of the assessment decision. The HCCC expects review decisions to be made within 28 days of the assessment decision.

If your complaint is investigated and is about a health care practitioner, then an outcome could be disciplinary proceedings against the practitioner. If it is about a health care provider, and is investigated, an outcome might be that the Commission makes comments leading to changes in the policies and procedures of the health care provider.

An outcome from investigation or any other HCCC assessment decision is very rarely compensation. The exception is that occasionally compensation or restitution can form part of an agreement following the conciliation process.

[For more information on making a complaint to the HCCC if you are an involuntary patient, click here.](#)

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

10D.2: The Official Visitor

If you have concerns about the standard of care of your treatment or the standard of facilities and services in a psychiatric unit or hospital or by community mental health you can contact the Official Visitor on **1800 208 218***.

Official Visitors are appointed by the NSW Minister for Health.

Official Visitors must visit each mental health inpatient facility and private psychiatric hospital in an Area Health Service at least once a month and each health care agency (Community Mental Health Centre) in an Area Health Service at least once every six months.

Panels of Official Visitors have the legal right to inspect every part of the hospital or health care provider and make such enquiries as they think necessary about care, treatment and control of voluntary and involuntary patients and people subject to Community Treatment Orders. They have the power to examine all records and registers and to interview any patient, or person subject to a Community Treatment Order. Official

Visitors are not able to discharge patients.

Official Visitors often are medical practitioners but may be other health care professionals, community representatives or lawyers. They must be independent of NSW Health. Official Visitors get paid a small amount for each visit.

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

10D.2.1: How to contact an Official Visitor

Official Visitors visit hospitals once a month and health care providers twice a year. You should let staff know if you want to see an Official Visitor during their next visit.

If you want to see the Official Visitor urgently you can ask the hospital or community staff to arrange it. The Medical Superintendent of a hospital or the Director of a health care provider must notify an Official Visitor of such a request within two days.

Most hospitals also have a locked box in a patient area where confidential messages can be left for the Official Visitors. The Official Visitors are the only people who can access the contents of these boxes. You should make sure you put your name and the date on the message so that the Official Visitors can follow up as quickly as possible. Ask the Nurse Unit Manager or a Social Worker where the box is located if you can't find it.

There should be a poster about Official Visitors, with a telephone number on which the Official Visitor can be contacted, displayed in the hospital or unit. This number gets through to the Official Visitor's Line.

Freecall: 1800 208 218*

Fax: (02) 9817 3945

In writing: In the Official Visitors Box in the ward

or

Official Visitors
Locked Bag 5016
GLADESVILLE NSW 1675

Office hours: Monday to Friday 9.00 am to 5.00 pm

If you ring, even in business hours, you may get an answering machine. To be dealt with as quickly as possible, you should leave your details and the circumstances of your complaint on the answering machine.

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

10D.2.2: Who can see the Official Visitors?

The following people have the right to see an Official Visitor:

- Voluntary patients
- Involuntary patients
- People under Community Treatment Orders
- Carers and family members

In practice, Official Visitors will also talk to relatives, friends and other health care and welfare professionals who have an interest in the care and treatment of a person who has been admitted as a patient.

10D.2.3: What can the Official Visitors do?

The Official Visitors must write a report to the Principal Official Visitor after each visit. The reports are confidential and are not given to hospital staff. Official Visitors can do all or any of the following:

- Talk to the health care professionals who are treating a particular person. This can often result in increased communication between concerned people about the treatment and care of that person.
- Raise concerns about treatment and care with senior hospital staff. Some problems can be solved at this level, especially if they are about particular hospital policies and practices.
- Accept confidential complaints about hospital care.
- Review the contents of the medical files of a person.

If you want your complaint to be confidential and not communicated to hospital staff you should make this clear to the Official Visitor, preferably in any written message or complaint that you give the Official Visitor. Official Visitors can then make their own observations and enquiries about the particular complaint and communicate their views to the Principal Official Visitor and/or the Minister for Health.

You can complain to the Official Visitors about the standards of facilities and services, for example, the quality and nutritional value of food you get and about hygiene or overcrowding.

If you or your family and friends are finding it hard to contact the Official Visitors, you can report the problem to the **Principal Official Visitor**:

Phone: (02) 8876 6301

Fax: (02) 9817 3945

Website: <http://www.ovmh.nsw.gov.au/>

Postal address: The Official Visitor

Locked Bag 5016

GLADESVILLE NSW 1675

10D.3: Private health insurance ombudsman

If you have a complaint about private health insurance you can contact the **Private Health Insurance Ombudsman**

Street address: Level 7, 362 Kent Street, Sydney NSW 2000.

Office hours: 9.00 am to 5.00 pm, Monday to Fridays

(not on public holidays)

Complaints Hotline: 1800 640 695*

Telephone: (02) 8235 8777

Facsimile: (02) 8235 8778

E-mail: info@phio.org.au

Website: <http://www.phio.org.au/>

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

10D.4: NSW Ombudsman

If your concerns are about a NSW Government Department or Agency other than one that provides a health care service, then you can contact the NSW Ombudsman.

[For more information generally about the role of an ombudsman click here to go to the website for the Australian and New Zealand Ombudsmans' Association.](#)

An important feature of the Ombudsman schemes is that they generally don't have any power to order the organisation complained about to do something, even if the Ombudsman finds that the complaint is proved.

The NSW Ombudsman deals with complaints about government administration within the NSW Government. That means that you can complain to the NSW Ombudsman about how a NSW Government Department or Agency deals with you (or what they have failed to do). The Ombudsman also deals with complaints about some government-funded organisations.

The NSW Ombudsman does not deal with complaints about health care standards or complaints about the ethical or professional conduct of health care professionals. [The Health Care Complaints Commission does this job](#) . The NSW Ombudsman can deal with complaints about access to health care or the conduct of government employees involved in providing health care when the complaint is not about professional standards.

The NSW Ombudsman has a page on 'Tips' for making complaints. [Click here to read.](#)

The NSW Ombudsman has also developed an on-line workshop to help people who have complaints about the community services sector.

The community services sector includes Community Services NSW; Ageing, Disability & Home Care NSW (ADHC); the Guardianship Tribunal; the NSW Trustee and Guardian, and accommodation and services for people with disability and frailer older people.

The online workshop is called 'The Rights Stuff'. [Click here for more information.](#)

To contact the **NSW Ombudsman**:

Freecall: 1800 451 524*
Teletypewriter (TTY): (02) 9264 8050
Phone: (02) 9286 1000
Facsimile: (02) 92832911

Online complaint form: [click here](#)

E-mail: nswombo@ombo.nsw.gov.au

Street address: Level 24, 580 George Street
SYDNEY NSW 2000

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

10D.5: Aged Care Complaints Investigation Scheme

If you have concerns, want information or want to complain about an aged care facility (nursing home or hostel) you can contact the Commonwealth Aged Care Complaints Investigation Scheme.

This Scheme investigates complaints about aged care services and their obligations under the *Aged Care Act 1997* (Cth).

You can contact the Scheme for information, to make a complaint or raise a concern about anything to do with the care and services provided to aged care recipients. For example, you can complain about care, catering, financial matters, hygiene, equipment, security, activities, choice, comfort and safety.

[Click here for more information about the Aged Care Complaints Investigation Scheme.](#)

You can you provide information or make a complaint to the **Aged Care Complaints Investigation Scheme** by:

Freecall: 1800 550 552*

Online complaint form: [click here](#)

Post address: C/- Department of Health and Ageing
GPO Box 9848
Sydney NSW 2000.

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

If you disagree with a decision of the Aged Care Complaints Investigation Scheme, you can contact the Office of the **Aged Care Commissioner** at the following contact points:

Freecall: 1800 500 294*

E-mail: info@agedcarecommissioner.net.au

Website (with online complaint form): www.agedcarecommissioner.net.au

Street address: Level 4, 12-20 Flinders Lane
MELBOURNE VIC

Postal address: Locked Bag 3
COLLINS STREET EAST VIC 8003

If you are in an aged care facility and you are concerned about aspects of the health care you have been given in that facility, you should complain to the [Health Care Complaints Commission \(HCCC\)](#). You could also make the [Aged Care Complaints Resolution Scheme](#) aware of your complaint.

[If you are an elderly patient in a NSW public hospital \(general or psychiatric\), you should complain to the Health Care Complaints Commission](#), not the Commonwealth Aged Care Investigation Scheme.

The Aged Care Commissioner has a factsheet with practical tips about making a complaint. [Click here to read the factsheet](#)

If you want advice about your complaint or concerns you can also contact [The Aged Care Rights Service \(TARS\)](#).

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

10D.6: Australian National Disability Abuse and Neglect Hotline

[The Australian National Disability Abuse and Neglect Hotline](#) is an Australia-wide telephone hotline for reporting abuse and neglect of people with disability who are using government-funded services. Complaints made to the hotline are referred to the appropriate authority for investigation.

Abuse and neglect can include physical, sexual, psychological, legal and civil abuse, restraint and restrictive practices, or financial abuse. Abuse and neglect can also include the withholding of care and support that exposes an individual to harm.

Government-funded services used by people with disability include open or supported employment; accommodation, community and respite care services.

The Australian National Disability Abuse and Neglect Hotline can be contacted on:

Phone: 1800 880 052*

Teletypewriter (TTY): 1800 301 130*

National Relay Service: 1800 555 677*

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

10D.7: The Complaints Resolution and Referral Service

The [Complaints Resolution and Referral Service](#) is for people using Australian Government-funded disability employment and advocacy services.

The Complaints Resolution and Referral Service deals with complaints about:

- any problem with a disability employment, vocational rehabilitation, targeted support or advocacy service, such as not getting a service or being unfairly required to leave the service;
- issues related to the Disability Services Standards;
- issues related to occupational health and safety or wages.

You can contact the **Complaints Resolution and Referral Service** at:

Phone: 1800 880 052*

Phone: (02) 9370 3174

Fax: (02) 9318 1372

Teletypewriter (TTY): 1800 301 130*

Postal address: Locked Bag 2705
STRAWBERRY HILLS NSW 2012

Website: <http://www.crrs.org.au/>

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

10D.8: Anti-discrimination bodies

If you have a complaint of discrimination that happened in NSW, there are two organisations that may be able to deal with your complaint:

- [The NSW Anti-Discrimination Board](#)
- [The Australian Human Rights Commission](#)

If your complaint is about a Federal Government department or agency or staff of one of these, then you will need to complain to the Australian Human Rights Commission.

There are some differences between the processes and outcomes of these two bodies and you should get advice before you decide which to complain to. For information about where to get advice and legal assistance, click [here](#)

There are also organisations in all of the other states and territories that perform a similar role to the Board and the Commission. For information about what organisations deal with anti-discrimination law in other states and territories (other than NSW), click [here](#).

10D.8.1: NSW Anti-Discrimination Board (ADB)

If you think you have a complaint or claim under NSW anti-discrimination law you should contact the **NSW Anti-Discrimination Board**.

Complaints to the Anti-Discrimination Board must be in writing. The Board has a complaint form in PDF or word that can be downloaded from its website. [Click here to go to the webpage to download the form](#). Or you can simply write a letter detailing what happened, etc. The form is useful as it sets out the information that you should, if possible, include in your complaint, whether it is on the form or in a letter.

Once the Board gets your complaint, it reviews it to make sure that it is a complaint of discrimination that is within the Board's powers to investigate. If it is, the Board will then contact the person and/or organisation(s) you have complained about and provide them with a copy of your complaint and ask for their response. That response will be provided to you for your comment.

The Board can, if necessary, call a meeting with you and the person or organisation you have complained about in order to try to resolve the complaint through discussion and agreement. This is called a conciliation meeting. You can ask to have a lawyer or advocate with you at a conciliation meeting. Generally, if you are not legally represented, the other side should not be.

If your complaint isn't resolved through the conciliation process, you can then decide whether or not you want to have it dealt with by the Administrative Decisions Tribunal. This is a more formal process, somewhat similar to a court.

[For more information about how to make a complaint to the ADB, click here.](#)

The Anti-Discrimination Board has offices in Sydney, Newcastle and Wollongong and can be contacted on:

Website: <http://www.lawlink.nsw.gov.au/ADB>

Sydney Office

Phone: (02) 9268 5555
Fax: (02) 9268 5500
Teletypewriter (TTY): (02) 9268 5522
Freecall: 1800 670 812*

Street address: Level 4, 175 Castlereagh Street
SYDNEY NSW

Postal address: PO Box A2122
SYDNEY SOUTH NSW 1235

Wollongong Office

Phone: (02) 4224 9960
Fax: (02) 4224 9961
Teletypewriter (TTY): (02) 4224 9967
Freecall: 1800 670 812*

Street address: 84 Crown Street
WOLLONGONG NSW

Postal address: PO Box 67
WOLLONGONG NSW 2520

Newcastle Office

Phone: (02) 4926 4300
Fax: (02) 4926 1376
Teletypewriter (TTY): (02) 4929 1489
Freecall: 1800 670 812*

Address: Level 1, 414 Hunter Street
NEWCASTLE WEST NSW 2302

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

10D.8.2: Australian Human Rights Commission

If you think you have a claim under Commonwealth anti-discrimination law, contact the Australian Human Rights Commission (was previously called the Human Rights and Equal Opportunity Commission or HREOC)

Complaints to the Australian Human Rights Commission must be in writing, but a complaint can be in a language other than English. There are several ways you can make a complaint. You can make your complaint online using the online complaint form. [Click here to go to the online complaint form](#). Remember to print yourself a copy of your completed form before you send it. The Australian Human Rights Commission also has a complaint form in PDF or word that can be downloaded from its website. [Click here to go to its website to download a form](#). You can also simply write a letter detailing what happened, etc. The online or downloadable complaint form is useful as it sets out the information that you should, if possible, include in your complaint, whether it is on the form or in a letter.

Once the Australian Human Rights Commission gets your complaint, it reviews it to make sure that it is a complaint of discrimination that is within the Commission's powers to investigate. If it is, the Commission will then contact you and the person and/or organisation(s) you have complained about and provide them with a copy of your complaint and ask for their response. That response will be provided to you for your comment.

The Australian Human Rights Commission can, if necessary, call a meeting of you and the person or organisation you have complained about in order to try to resolve the complaint through discussion and agreement. This is called a conciliation meeting. You can ask to have a lawyer or advocate with you at a conciliation meeting. Generally, if you are not legally represented, the other side should not be.

If your complaint isn't resolved through the conciliation process, you can then decide whether or not you want to have it dealt with by the Federal Court or Federal Magistrates' Court. This is a formal court procedure.

[Click here for information about complaints to the Australian Human Rights Commission.](#)

You can contact the **Australian Human Rights Commission** on:

Phone: 1300 656 419*
Phone: (02) 9284 9888
Teletypewriter (TTY): 1800 620 241*
Fax: (02) 9284 9611

Online complaints form: [click here](#)
E-mail: complaintsinfo@humanrights.gov.au
Website: <http://www.humanrights.gov.au>

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

10D.9: The Privacy Commissioners: Commonwealth and NSW

Both the **Commonwealth and the NSW Privacy Commissioner** deal with complaints about personal information privacy, including health information privacy. [Both Commissioners consider whether the Privacy Principles](#) have been breached when dealing with a complaint.

[Both Commonwealth and NSW Privacy Principles include a right \(with exceptions\) that everybody has to access their health records.](#)

[If the complaint is about a NSW Government Department or Agency, then it is best to complain to the NSW Privacy Commissioner.](#)

If the complaint is about a private health care provider, such as a private hospital, a GP or a medical centre, then you can [complain to either the Commonwealth](#) or [NSW Privacy Commissioner](#).

If the complaint is about a Commonwealth Government Department or Agency you should complain to the [Commonwealth Privacy Commissioner](#).

10D.9.1: Commonwealth Privacy Commissioner

Please note that on 1 November 2010 the Office of the Privacy Commissioner was integrated into the Office of the Australian Information Commissioner (OAIC).

The **Commonwealth Privacy Commissioner** can be contacted on:

Phone: 1300 363 992*
Teletypewriter (TTY): 1800 620 241*
Fax: (02) 9284 9666

E-mail: privacy@privacy.gov.au

Postal address: GPO Box 5218
SYDNEY NSW 2001

Website: <http://www.privacy.gov.au>

Complaints to the Commonwealth Privacy Commissioner have to be made in writing. If you need help to make a complaint, call the Enquiries Line on 1300 363 992*.

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) and to Local call numbers (numbers starting with 13 or 1300) are charged to the caller at the usual mobile rate.

10D.9.2: NSW Privacy Commissioner

The **NSW Privacy Commissioner** can be contacted on:

Phone: (02) 8019 1600
1800 472 679
Fax: (02) 8114 3755

E-mail: privacyinfo@privacy.nsw.gov.au

Street address:
Level 11
1 Castlereagh St
SYDNEY NSW 2000

Postal address: GPO Box 7011
SYDNEY NSW 200124

Website: <http://www.ipc.nsw.gov.au>

10D.10: Financial Ombudsman Service

The Financial Ombudsman Service resolves disputes between consumers and its member Financial Services Providers. It is a service that is offered as an alternative to going to court if you have a dispute with a business that has provided you with a financial service (this includes including banking, credit, loans, general insurance, life insurance, financial planning, investments, stock broking, managed funds and pooled superannuation trusts).

[Click here to find out how to lodge a dispute with the Service.](#)

[Click here to go to the Financial Ombudsman Service's website.](#)

To contact the **Financial Ombudsman Service**:

Phone: 1300 780 808*
(03) 9613 7366
Fax: (03) 9613 6399

Postal address: GPO Box 3
MELBOURNE VIC 3001

Online complaints/disputes: [click here](#)

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

10D.11: Telecommunications Industry Ombudsman (TIO)

The **Telecommunications Industry Ombudsman** investigates complaints about telephone and internet services and is a free and independent alternative dispute resolution scheme for consumers in Australia with unresolved complaints about these services.

Contact the TIO on **1800 062 058***

[Click here to visit the website.](#)

[Click here to lodge an online complaint.](#)

[Click here for other ways to make a complaint.](#)

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

10D.12: Energy and Water Ombudsman (EWON) (NSW)

EWON NSW offers a free service resolving complaints about energy and water suppliers in NSW.

EWON can deal with:

- disputed accounts, high bills
- debts, arrears
- disconnection or restriction of supply
- actions of a supplier that affect your property
- reliability of supply
- quality of supply (including claims for compensation)
- connection or transfer issues
- negotiated contracts
- marketing practices
- poor customer service

[Click here to find out how to make a complaint to EWON](#) (including complaints forms).

If you are having problems paying your electricity, gas or water bill, there are options available. [Click here for more information.](#)

[Click here to go to the EWON NSW website.](#)

EWON contact details:

Freecall: 1800 246 545*

Freefax: 1800 812 291

Freepost: Reply Paid K1343

HAYMARKET NSW 1239

Online complaint form: [Click here](#)

E-mail: omb@ewon.com.au

Address: Level 10, 323 Castlereagh Street
SYDNEY

(By appointment -1800 246 545)

Office hours: 9.00 am to 5.00 pm, Monday to Fridays
(not on public holidays)

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

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Part 10 Section E : Support through advocacy

This part discusses [what advocacy is](#) and the [different types of advocacy](#). Legal advocacy is briefly discussed, but for more information about legal services and legal advocacy, click [here](#).

There is information about different types of advocacy: self-advocacy, [individual advocacy and systemic advocacy](#).

There is information about several advocacy services that may be able to help you, as well as [information about organisations that advocate for systemic change](#).

10E.1: What is advocacy?

An advocate is a person who speaks or communicates on behalf of another person. Advocacy is what an advocate does.

Advocacy is important to achieving an outcome through the legal system, through a formal complaints process or from an organisation that you are unhappy with. In all of these situations, an advocate can use their skills to outline effectively your concerns to the relevant person or organisation and what outcome you want.

When you are dealing with the legal system and legal problems, you should seek help from a lawyer. Usually a lawyer will be your advocate in court or at a tribunal dealing with your legal problem.

Most courts discourage people other than lawyers from being advocates in the legal process. Some will not allow this at all; others will allow this only in exceptional circumstances. Some courts and tribunals will let non-legal advocates help another person with their case, but not let them speak on behalf of the person they are helping.

Conversely, there are some tribunals where solicitors or barristers are not allowed to advocate on behalf of other people in the hearing or are only allowed to do so with special permission.

The rest of this section of the Manual only deals with advocates assisting in non-legal situations. For information about how to access lawyers for both advice and legal advocacy, click [here](#).

There are different types of non-legal advocacy and they are done by different people. For more about the different types of advocacy, click [here](#). For information about advocacy service that may be able to help you, click [here](#).

10E.1.1: What are the different types of advocacy?

You may come across references to different sorts of advocacy. Sometimes, in real life, they overlap. Some organisations and individuals only do one type of advocacy. However, others do a range of types of advocacy, sometimes even when they are assisting with one person's particular complaint or concerns.

- **Self-advocacy** is when someone advocates on her or his own behalf.
- **Individual Advocacy** is advocacy on behalf of a person (or groups of persons such as a close family group) to try to get particular outcomes or answers to questions.
- **Systemic Advocacy** is when someone advocates for a system or policy change or reform of the law on behalf of the members of their organisation or on behalf of a sector of the community or the broader community. The outcomes sought are changes in systems, policy or the law, not changes in specific outcomes for individuals in specific situations.

However, sometimes when individual advocacy takes place systemic change can be one of the outcomes. When people say they are complaining because they don't want what they are complaining about repeated in the future, they are participating in systemic advocacy as well as individual advocacy.

10E.2: Specialist advocacy services that can help a person with mental illness

10E.2.1: The Multicultural Disability Advocacy Association of NSW (MDAA)

The **Multicultural Disability Advocacy Association** (MDAA) provides individual advocacy for people with a non-English speaking background with disability, including mental illness. MDAA is a state-wide service and has advocates in a number of regional centres in NSW.

Examples of the kinds of issues MDAA advocates on include when people have problems with housing, immigration, school, work and disability services, as potential areas of assistance.

MDAA can be contacted at:

Phone: (02) 9891 6400
Freecall: 1800 629 072*
Fax: (02) 9635 535
Teletypewriter (TTY): (02) 9687 6325

Street address: 40 Albion Street
HARRIS PARK NSW

Postal address: PO Box 9381
HARRIS PARK NSW 2150

Website: <http://www.mdaa.org.au/>

[Click here for a list of MDAA advocates in regional areas.](#)

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

10E.2.2: People with Disability Australia (PWD) - Disability Rights Information Service

The Disability Rights Information Service provides advice and referral services for people with disabilities. It also offers direct short-term issues-based advocacy services of a non-legal nature. [Click here to go to the People with Disabilities Australia website.](#)

People with Disability Australia also provides independent advocacy assistance to people living in licensed Residential Centres (licensed boarding houses) in NSW. Its role is to:

- promote and protect residents' legal, consumer and human rights;
- to make sure that residents have access to health, allied health and community services;
- support resident participation and decision-making in transition to new living arrangements, and to
- provide an independent source of information to residents in their interactions with government agencies and service providers.

PWD and the Disability Rights Information Service can be contacted on:

Phone: (02) 9370 3100
Freecall: 1800 422 015*
Fax: (02) 9318 1372
Teletypewriter (TTY): (02) 9318 2138

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

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Part 10 Section F : Legal help

10F.1: Types of legal help

Practising lawyers in NSW are either solicitors or barristers. Barristers mainly appear as advocates in Court, on 'instruction' from a solicitor. To get initial advice or to start a legal action you first should approach a solicitor.

Solicitors work:

- in the private sector, in law firms or as 'in-house' lawyers for businesses;
- [in the public sector, either providing 'in-house' advice and representation for government departments or agencies or providing advice and legal representation for members of the public in bodies such as Legal Aid NSW;](#)
- [in the community sector in community legal centres.](#)

There are different types of legal services available in NSW, depending on your needs as a client.

Initially, you may just want some legal advice, to find out your options and possible outcomes from these options.

Once you decide what you are going to do and how the solicitor can help you, then the solicitor may need to take further action. This may be, for example, writing a letter on your behalf, or arranging for an expert report.

If you decide to take legal action in the courts or decide you need a lawyer to defend you in existing legal action in a court, further work such as preparing court documents and officially asking through the courts for relevant documents from other people or organisations (done using a document called a subpoena or a summons) will have to be done. Further information is also likely to be needed from you at this stage, in order to complete these tasks.

The solicitor may represent you in court or you might decide to have the solicitor instruct a barrister to be your advocate in the courtroom.

For information about who pays for legal services, click [here](#).

10F.2: Who pays for legal services?

Legal Aid NSW can pay for some legal services through a grant of legal aid. A grant of legal aid not always made totally without cost to the client. Legal Aid NSW can, and often does, ask for a contribution to its costs.

Community Legal Centres do not usually charge for their services, but sometimes they can get paid by Legal Aid NSW to represent you in a particular legal case. In such cases, Legal Aid's contribution requirements can apply.

Generally private lawyers charge their clients for their services. (There is regulation of solicitors' fees in NSW and you can complain to the Legal Services Commission if you think you have been overcharged. [Click here to go to the Legal Services Commission website for more information.](#))

However sometimes the services they provide come at no charge or a reduced charge. This could be because:

- They have provided their service on a [pro bono basis](#) (at no or low cost to the client)
- Legal Aid NSW gives a grant of legal aid for all or part of the legal service they are providing.

[Click here for information about where to go if you can't afford to pay for legal services.](#)

10F.3: Where to go if you can't afford to pay for legal services

There are four main ways that legal help is available for no or reduced cost:

- [Legal aid](#)
- [Community Legal Centres](#)
- [The Aboriginal Legal Service](#)
- [Pro bono legal service providers](#)

[In NSW, there are both generalist legal assistance providers, that is, organisations that provide legal assistance to a local community](#), and specialist legal assistance providers. There are several specialists that deal with disability rights issues, [including legal issues affecting people with mental illness](#).

[It is often best to contact LawAccess first to find out which service is most appropriate for you.](#)

10F.4: LawAccess

For information about your legal rights and to find out where to get legal help, you should call **LawAccess** on 1300 888 529*.

LawAccess NSW is a free government telephone service that provides legal information, advice and referrals for people who have a legal problem in NSW.

In particular, LawAccess helps people:

- who live in regional, rural and remote areas of NSW
- who are Aboriginal or Torres Strait Islander
- with disability
- who are from a culturally and linguistically diverse (CALD) background
- who are at risk of harm
- who have an urgent legal problem

LawAccess can help by giving you legal information over the phone, sending you information, giving you the contact details for appropriate legal service providers as well as for other related services, and in some cases giving you legal advice over the phone.

LawAccess also has a lot of legal information available on its website.

To contact **LawAccess**:

Phone: 1300 888 529*

Teletypewriter (TTY): 1300 888 529*

Website: <http://www.lawaccess.nsw.gov.au/lawaccess.asp>

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) and to Local call numbers (numbers starting with 13 or 1300) are charged to the caller at the usual mobile rate.

10F.5: Legal Aid NSW

There are three ways in which **Legal Aid NSW** may be able to help you:

- Giving you initial free legal advice
- Providing you with legal representation from a Legal Aid NSW lawyer
- Granting you legal aid to pay a private lawyer or a Community Legal Centre (CLC) lawyer to represent you

You can get initial free legal advice from Legal Aid NSW by ringing and making an appointment to see a lawyer in one of the Legal Aid Offices in Sydney suburbs or in regional areas of NSW.

Family law advice is available without an appointment at the head office of Legal Aid NSW in Sydney (Ground Floor, 323 Castlereagh Street, Sydney) in normal business hours, Monday to Friday). This office is located near Central Railway Station, across Belmore Park from Eddy Avenue.

Legal Aid NSW's Parramatta office has clinic days for family law advice on Monday, Wednesday and Friday, 9.30 am–12.30 pm and 2.00 pm–4.00 pm. The Parramatta Legal Aid office is at Level 5, 91 Phillip Street, Parramatta, phone: (02) 9891 1600.

[Click here to find the contact details for all legal aid offices in NSW.](#)

If you want further help from Legal Aid NSW, for example even if you just want them to send a letter on your behalf, you will have to make an application for a grant of legal aid. You can also make an application for a grant of legal aid to pay for a private lawyer to represent you or, in some cases, if you are being represented by a Community Legal Centre.

Representation by a Legal Aid lawyer and a grant of legal aid are both usually subject to a means test, an assets test and sometimes a merits (reasonable prospects for success) test. [All the legal aid policies and guidelines are on the Legal Aid NSW website](#). There is an internal review process if your application for legal aid is not granted and you want to challenge the decision.

10F.6: Specialist legal service providers

In NSW, there are several legal assistance providers that specialise in providing services to people with disability including mental illness:

- [The Mental Health Advocacy Service \(MHAS\)](#)
- [The NSW Disability Discrimination Legal Centre \(DDLC\)](#)
- [The Intellectual Disability Rights Service \(IDRS\)](#)
- [The Mental Health Legal Services Project at the Public Interest Advocacy Centre](#)
- [The Homeless Persons' Legal Service \(HPLS\)](#)
- [The Aged Care Rights Service \(TARS\)](#)

10F.6.1: The Mental Health Advocacy Service

The **Mental Health Advocacy Service** (MHAS) is part of Legal Aid NSW.

The main role of the MHAS is to provide free legal representation to patients in mental health inquiries held by the Mental Health Review Tribunal under the *Mental Health Act 2007* (NSW). The MHAS can also give you information over the phone about the *Mental Health Act 2007* (NSW).

The MHAS employs a social worker who can also give you advice on non-legal matters and advocate on your behalf in some circumstances.

Lawyers from the MHAS act on your instructions (that is, what you tell them you want in relation to your treatment and care, etc). The MHAS can, for example, help you to challenge involuntary treatment or financial orders sought by a hospital.

Representation by the MHAS is free of charge and without a means or merit test in the following situations:

- to patients in mental health inquiries held by the Mental Health Review Tribunal
- to patients in appeals against the refusal of the medical superintendent to discharge from involuntary status
- to patients asking the Mental Health Review Tribunal to cancel a Community Treatment Order
- to forensic patients appearing before the Mental Health Review Tribunal
- [to people with disability appearing before the Guardianship Tribunal](#).

In all but the last situation, a lawyer from the MHAS may contact the patient before the hearing and offer representation.

Representation is available free of charge from the MHAS, subject to a merit test, for:

- appeals against a refusal by the Authorised Medical Officer to discharge a patient
- applications for cancellation of a Protected Estates Order
- appeals to the Supreme Court

A grant of legal aid is also available, subject to a means and merit test, for representation for people, other than a person with disability, before the Guardianship Tribunal. A grant of legal aid allows the recipient to get a private lawyer to represent them.

For a detailed list of the legal aid policies for representation in inquiries held under the *Mental Health Act 2007* (NSW), [click here](#) or phone the MHAS on (02) 9745 4277.

The policy of Legal Aid NSW is that, where possible, people who are getting legal assistance in mental health matters are represented by a lawyer from the MHAS. Some representation is, however, provided by private solicitors acting on a grant of legal aid, usually in country areas.

The MHAS will accept reverse charge telephone calls from people with enquiries outside the Sydney area, and will arrange for interpreters where necessary.

You can contact the MHAS by calling 02 9745 4277, or [click here to go to the MHAS website](#).

10F.6.2: NSW Disability Discrimination Legal Centre (DDLC)

The NSW Disability Discrimination Legal Centre (DDLC) is a Community Legal Centre that provides free legal advice, and sometimes legal representation, in disability discrimination cases only.

For information on the right to equality and discrimination laws, click [here](#).

You can get legal advice by phone from the DDLC on Tuesdays, Wednesdays and Fridays from 9.30 am to 12.30 pm.

Freecall: 1800 800 708*
Teletypewriter (TTY): (02) 9310 4320
Freecall TTY: 1800 644 419*
Fax: (02) 9310 7788

Postal address: PO Box 989
STRAWBERRY HILLS NSW 2012

E-mail: info@ddlcnsw.org.au
Online enquiries: <http://www.ddlcnsw.org.au/contact/>

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) and to Local call numbers (numbers starting with 13 or 1300) are charged to the caller at the usual mobile rate.

10F.6.3: Intellectual Disability Rights Service

The **Intellectual Disability Rights Service** (IDRS) is a Community Legal Centre that provides free legal advice and information for people with an

intellectual disability or others acting on their behalf within NSW. Initial advice is provided over the phone by appointment. [Click here to go to the IDRS website.](#)

IDRS also runs the **Criminal Justice Support Network (CJSN)**. The Criminal Justice Support Network (CJSN) is a state-wide support and information service for people with an intellectual disability who are victims, witnesses, suspects or defendants in criminal matters. [For more information click here.](#)

To get a support person or legal advice for people with intellectual disability in police custody, please call **1300 665 908***.

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) and to Local call numbers (numbers starting with 13 or 1300) are charged to the caller at the usual mobile rate.

10F.6.4: Mental Health Legal Services Project - PIAC

The **Public Interest Advocacy Centre (PIAC)** has received funding to develop pilot projects to address unmet needs for mental health advocacy, both legal and individual, in NSW

The pilot projects are:

- A social work service at [Shopfront Youth Law Centre](#) Darlinghurst, provides case management and care co-ordination for Shopfront's homeless, mentally ill clients.
- A legal support service at the [Multicultural Disability Advocacy Association \(MDAA\)](#) provides legal information, advice, referral and casework services for mentally ill clients, as people of non-English speaking backgrounds are particularly disadvantaged when it comes to having their legal needs met.
- An indigenous men's support service at the Gamarada Indigenous Men's Healing Program, Redfern, provides Aboriginal men with the opportunity to heal from trauma as the basis for working on their legal and other issues. The Access to Justice worker is facilitating connections between these men, the Gamarada Program and legal, health and community services.
- A legal support service at the [NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors \(STARTTS\)](#), provides legal information, advice, advocacy, casework and referral services for refugee clients who have mental illnesses and related complex needs.

If you think this service could help you, you should contact PIAC on (02) 8898 6500.

10F.6.5: Homeless Persons' Legal Service (HPLS)

If you are homeless or at risk of becoming homeless, you can get initial legal advice and possibly have some other legal work performed under this scheme. Legal advice is provided free of charge at **Homeless Persons' Legal Service (HPLS)** clinics. [Click here for the location and times of the clinics.](#)

HPLS provides advice and representation to people who are homeless or at risk of homelessness in the following matters:

- Civil and administrative law
- Housing and tenancy
- Fines and infringement/penalty notices
- Social Security/Centrelink
- Consumer credit, debt and bankruptcy
- Guardianship, administration and problems with State Trustees
- Victims of crime assistance and compensation
- Employment
- Discrimination
- Mental health
- Minor criminal cases

HPLS can help people who are homeless or at risk of homelessness by giving them general information about the law and a referral to another legal service provider in the following matters:

- Criminal law
- Family law
- Immigration
- Personal injury
- Wills and estates

You can contact **HPLS** on (02) 8898 6545.

10F.6.6: Aged care Rights Service (TARS)/Older Persons Legal Service

The **Aged care Rights Service (TARS)** is a Community Legal Centre that provides advice and advocacy for the residents of Commonwealth funded hostels and nursing homes, self-care retirement villages and recipients of in-home aged care in NSW. TARS also give information on the costs associated with entering an aged care home and gives advice on retirement village contracts.

TARS also runs the **Older Persons Legal Service**. This service gives legal advice to 'older people who are socially or economically disadvantaged' on the following matters:

- Consumer issues: debt management, certain contractual matters and unfair contracts, provision of goods and services.
- Human rights matters: age discrimination, financial abuse by relatives and carers, assistance with access to the administration of state and Commonwealth laws and programs.
- Social security: if an interaction with the welfare systems fails.
- Alternative decision-making: issues involving the capacity to make financial care decisions, powers of attorney and enduring guardianship.

Both services can be contacted at:

Phone: (02) 9281 3600
Fax: (02) 9281 3672
Freecall: 1800 424 079*

Address: Level 4, 418A Elizabeth St
SURRY HILLS NSW 2010

Users who are deaf or have a hearing or speech impairment can call through the National Relay Service: TTY users phone 133 677* then ask for (02) 9281 3600.

Speak and Listen (speech to speech relay) users phone 1300 555 727* then ask for (02) 9281 3600.

Internet relay users connect to the National Relay Service (see <http://www.relayservice.com.au> for details) and then ask for (02) 9281 3600.

Office hours are 9.00 am to 4.30 pm Monday to Friday.

[Click here to go to TARS website.](#)

[To find out more on the Older Persons Legal Service click here.](#)

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) and to Local call numbers (numbers starting with 13 or 1300) are charged to the caller at the usual mobile rate.

10F.7: Community Legal Centres

Community Legal Centres (CLCs) can either be local or specialist legal centres that provide free legal advice and representation to the local community or on particular areas of the law or to specific client groups, such as tenants, or people with intellectual disability.

[Click here for a list of Community Legal Centres in NSW.](#)

Many local CLCs have evening drop-in advice sessions. You should check the list of CLCs to find out if there is a local CLC near you.

You should contact CLCs by telephone before you visit them to get advice and/or representation. The CLC can then tell you whether they can help you and when, and if, they can provide a lawyer to give you advice. Sometimes Community Legal Centres have particular times when volunteer and/or staff lawyers are available to give free legal advice. Sometimes these are evening sessions.

The specialist CLCs generally provide services across NSW and it is best to contact them by telephone to find out if they are the right service to assist you. The specialist CLCs that are most likely to be able to assist with legal problems related to mental illness are:

- [The NSW Disability Discrimination Legal Centre \(DDLCC\)](#)
- [The Intellectual Disability Rights Service \(IDRS\)](#)
- [The Mental Health Legal Services Project at the Public Interest Advocacy Centre](#)
- [The Homeless Persons' Legal Service \(HPLS\)](#)
- [The Aged Care Rights Services \(TARS\)](#)

10F.8: Aboriginal Legal Service (NSW/ACT) (ALS)

Aboriginal and Torres Strait Islander people can access the **Aboriginal Legal Service (ALS)** for advice and representation. The ALS in NSW almost exclusively provides this advice and representation in criminal matters, apprehensive violence matters and care and protection matters.

[Click here to go to their website for office locations and contact details.](#)

10F.9: *Pro bono* legal services

Pro bono legal services are legal services that are provided by private lawyers at no or low cost to the client. '*Pro bono*' means 'for the public good'. Many private law firms do work for clients on a *pro bono* basis. The easiest way to find out if there is a firm or private lawyer that will help you with your legal problem on a *pro bono* basis is to contact one of the *pro bono* referral schemes that operate in NSW:

- [The Public Interest Law Clearing House \(PILCH\) NSW](#)
- [The Law Society of NSW Pro Bono Scheme](#)
- [The NSW Bar Association Legal Assistance Referral Scheme](#)

10F.9.1: Public Interest Law Clearing House (PILCH) NSW

PILCH NSW may help you to find representation from private lawyers willing to act *pro bono* in public interest cases.

'Public Interest' is interpreted to include issues that particularly impact on disadvantaged, vulnerable and marginalised groups or raise matters of broad public concern.

For PILCH NSW, public interest issues can arise across a range of issues and legal topics including accountancy, corporate law, credit and debt, discrimination, employment, human rights, administrative law, homelessness, environmental matters, criminal, immigration, associations' management and international law.

PILCH NSW is not like Legal Aid. A matter could have considerable merit but still not be seen as a public interest matter.

PILCH can be contacted by:

Phone: (02) 9114 1793

E-mail: info@pilchnsw.org.au

Postal address: GPO Box 863
SYDNEY NSW 2000

10F.9.2: The Law Society of NSW Pro Bono Scheme

If you have been refused legal aid, and you have ongoing legal work to be performed, then you should consider approaching the [NSW Law Society](#) under this scheme.

The Law Society of NSW operates the Pro Bono Scheme, which co-ordinates referrals of clients to law firms, which are willing to provide legal assistance on a *pro bono* basis. The Pro Bono Scheme has means, needs and merit tests.

The criteria and guidelines for *pro bono* referrals to law firms follow a three-step process:

- The client must have been refused legal aid for the relevant proceedings;
- A means and merit test is applied;
- The matter must fall within the Scheme's guidelines, ie, it must be within an area of law included by the scheme.

The case must also have a reasonable prospect of success.

Matters, in which lawyers will undertake legal work for you under the pro bono scheme, include:

- Administrative law
- Apprehended Violence Order applications
- Business law in relation to non-profit organisations
- Children's care and protection
- Criminal law
- Debt and credit matters
- Discrimination matters
- Employment and industrial law
- Family law (limited to children's matters)
- Immigration law
- Tenancy matters
- Wills and estates

Areas that are excluded from the Pro Bono Scheme include: business law, save in exceptional circumstances; child maintenance matters; defamation matters; defended apprehended violence orders; disputes about legal costs; family law property disputes; local government and planning disputes; medical negligence claims; motor vehicle accidents/traffic matters; neighbourhood disputes; personal injury claims; professional negligence claims; property and conveyancing matters; victim's compensation claims.

You can apply by calling Law Access NSW on 1300 888 529*, or you can [click here to go to the Law Society of NSW website to download the application form](#).

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) and to Local call numbers (numbers starting with 13 or 1300) are charged to the caller at the usual mobile rate.

10F.9.3: NSW Bar Association Legal Assistance Referral Scheme

If you are going to Court and cannot afford legal representation, it may be possible to get a barrister to appear for you for free under this scheme. You must have a hearing or trial date before you can make a request under this scheme.

To apply, contact the **NSW Bar Association Legal Assistance Referral Scheme** at Selborne Chambers:

Phone: (02) 9232 4055
Fax: (02) 9221 1149
Street address: 174 Phillip Street
SYDNEY NSW

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Part 10 Section G : Alternative dispute resolution

Alternative dispute resolution (ADR) is a way of solving problems without going to court or a tribunal. In mediation, which is a form of ADR, the parties in dispute agree to come together to find a solution to a problem. Other forms of alternative dispute resolution include conciliation and arbitration.

This section sets out [the role Community Justice Centres can play in helping you to resolve disputes you have with other people](#).

The section also outlines the role ADR can play in helping to resolve health care complaints through the Health Conciliation Registry and the [Health Care Complaints Commission's Resolution Service](#).

There is also [information about private ADR](#).

10G.1: Community Justice Centres

Anyone involved in a dispute can take steps to resolve it through mediation. For example, if you are having a dispute with your landlord, with your case manager or your neighbour, you can arrange a mediation session through a Community Justice Centre (CJC).

CJC Mediation services are free, voluntary and confidential.

Mediators do not take sides or decide who is to blame. They help the parties in dispute to reach agreement or find a solution that is fair and reasonable. Two mediators are involved in each mediation session. Once an agreement is reached, the agreement are written down by the mediators with the help of the parties who are present and who sign the completed written agreement.

Click [here](#) for how to arrange for mediation.

10G.1.1: How to arrange for mediation

The procedure is informal and there is no need to go to a Community Justice Centre in person to arrange for mediation. Simply contact your local Community Justice Centre by phone on 1800 990 777*, fax, or e-mail. The Centre will give you information about mediation and will contact the other people involved in a conflict to find out whether they will attend a mediation session. Mediation services are available throughout NSW.

[Click here to go to the CJC website](#).

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

10G.2: Alternative dispute resolution in health care complaints

Complaints to the [Health Care Complaints Commission \(HCCC\)](#) about health care practitioners and/or health care providers can be referred for conciliation to the Health Conciliation Registry.

Conciliation is a confidential process that gives the people involved an opportunity to discuss the complaint and see if they can agree on how to resolve it in a way that everyone involved is okay with.

The types of complaints that the Commission assesses as suitable for conciliation are likely to meet at least one of the following criteria:

- there was a breakdown in communication between the parties;
- insufficient information was provided to the complainant;
- an inadequate explanation was given for a poor outcome or adverse event;
- the complainant is seeking an improvement in the quality of the particular health service;
- the complainant is seeking a refund or financial compensation as an outcome.

It is totally within the discretion of the Health Care Complaints Commissioner whether a complaint is referred to the Health Conciliation Registry. However, if this seems an appropriate way for you to resolve your complaint or concern, you should ask for a conciliation in your complaint letter to the HCCC. You could also contact the Registry on 02 9219 7474 or 1800 043 159 (freecall*) before you write your complaint.

If you complain to the HCCC, your complaint could also be referred to a less formal form of alternative dispute resolution called 'Assisted Resolution' run by the HCCC's Resolution Service.

[For more information about Assisted Resolution at the HCCC, click here](#).

* Remember, mobile phone calls to freecall numbers (numbers starting with 1800) are charged to the caller at the usual mobile rate.

10G.3: Private dispute resolution

Many solicitors now offer services in alternative dispute resolution, including mediation.

The **NSW Law Society has a Mediation Scheme**. There is a cost involved in using this service. [To find out more click here](#).

LEADR, the Association of Dispute Resolvers, also offers alternative dispute resolution services. Generally there is a cost involved in engaging a private mediator to help you resolve your dispute, but LEADR is a member of the Public Interest Law Clearing House (PILCH) NSW and, if your dispute is in the public interest, you may be able to access a LEADR mediator on a *pro bono* (free of charge) basis.

[To find out more about LEADR, click here](#). To find out more about PILCH NSW, click [here](#).

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Part 10 Section H : How to be effective in making a complaint

This section discusses how to make an effective complaint.

It first discusses the question of [who to make a complaint to](#) . That is, whether firstly you should complain to the organisation or body you are complaining about or to a designated independent complaints body.

[The second question is whether you should make a complaint in writing](#).

There is also a page with [links to other documents about effective complaints and letter-writing](#) .

10H.1: Who to complain to and should the complaint be in writing

When you decide you are going to make a complaint you have several decisions to make at the start of the process:

- The first is, [who should you complain to](#)
- The second is, [should the complaint be in writing](#)

10H.1.1: Who to complain to

You can and should consider making a complaint first to the organisation or body that the complaint is about. If you are not comfortable doing this, you can [complain to one of the established complaints bodies that exist](#) . Some of the complaint bodies require you to try to resolve the complaint direct with the organisation you are complaining about.

Most large organisations, both public and private, have complaints policies and sometimes designated complaints sections or complaints officers. There are advantages in complaining to the organisation or body you are complaining about first:

- You are likely to get a more timely response.
- If your concerns are urgent, your concerns could be resolved quickly.
- Even if your concerns are not urgent, you might receive a quick resolution to your complaint. For example, you might receive an apology and you might decide that that is a sufficient outcome for you.
- Even if nothing else happens, you will probably have access to the other party's version of events and gain more information about what happened. This can be used if taking the complaint further to an external body if necessary.
- If you prefer to make your complaint verbally, they are less likely to insist on a written complaint than an external complaint body.

10H.1.2: Should you put your complaint in writing

Many organisations and bodies like the NSW Health Care Complaints Commission, only accept written complaints.

Even if an organisation does accept verbal complaints, it is still generally preferable to put your complaints, concerns or questions in writing for the following reasons:

- Although the body accepting the verbal complaint might record what you say to them, you will not have any record, except your memory, of the details of your complaint. When you receive a response, it will be more difficult to check whether all your complaints and all of your questions have been responded to.
- If you make your complaint verbally, you are less likely to receive a comprehensive written response in reply. This means you will have less information to pass on to a formal complaints body if you decide to take your complaint further.
- Putting a complaint in writing means you are less likely to overlook something when you are making your complaint.
- Putting your complaint in writing makes it easier for someone dealing with your complaint to understand your concerns and what you want done about them. If you ask questions, and they are put in writing, then your questions are less likely to be misunderstood and you are more likely to receive answers that deal the substance of the question.

However, if you feel more comfortable talking to someone rather than writing it down, then you may still receive the answers or an explanation that satisfies you, an apology that you want or systemic change in the organisation to make sure the same mistake is not repeated simply from a telephone call or face to face meeting. In other words, a verbal complaint is far more likely to lead to a satisfactory outcome than the third option of doing nothing at all.

[If you have difficulty in writing a written complaint, because of your English language skills, your literacy levels or just the stress of the situation, then an advocacy organisation might be able to help you.](#)

10H.2: More complaint and letter-writing tips

The NSW Ombudsman has a fact sheet on tips for effective complaints, [click here to read it](#).

The HCCC has an information sheet about effective health care complaints, [click here to read it](#).

The Complaint Line has also guides to making a complaint, [click here to read it](#).

The Complaint Line also has a letter-writing guide with sample letters, [click here for more information](#).

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Chapter 11 - Appendices

11A: Key Terms

test text

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Key organisations

Appendix B : Key Organisations

Aboriginal Disability Network NSW

A network that brings together Aboriginal and Torres Strait Islander people with disability (including people with mental illness) to tell their stories, share their experiences and provide each other with support. For more, click [here](#).

[Administrative Decisions Tribunal](#)

The NSW Tribunal that can review administrative decisions made by New South Wales Government agencies and decide complaints of discrimination. [For more, click here](#).

Aged Care Complaints Investigation Scheme

This Scheme investigates complaints about aged care services and their obligations under the *Aged Care Act 1997* (Cth). For more, click [here](#).

Anti-Discrimination Board

The NSW Government agency responsible for the *Anti-Discrimination Act 1977* (NSW). For more, click [here](#).

[ARAFMI](#)

An organisation that provides information and support for those with family members and/or friends with mental illness or disorder. For more, [click here](#).

[Asylum Seekers Centre of NSW](#)

A centre that offers a range of health care programs and non-health-related support to asylum seekers. For more, click [here](#).

Australian Human Rights Commission

The Commonwealth Government agency responsible for national anti-discrimination laws including the *Disability Discrimination Act 1992* (Cth). For more, click [here](#).

[Australian National Disability Abuse and Neglect Hotline](#)

This is an Australia-wide telephone hotline for reporting abuse and neglect of people with disability who are using government-funded services. For more, click [here](#).

[Children of Parents with a Mental Illness \(COPMI\)](#)

This is an initiative of the Australian Infant Child Adolescent and Family Mental Health Association (AICAFMHA) that information to people who care for a parent with mental illness. For more, [click here](#).

[Co-Exist NSW: Diversity Health Comorbidity Services](#)

A service for people from CALD backgrounds who are living with two or more mental health conditions, or a mental health condition and a substance abuse or problem gambling condition. For more, [click here](#).

[Commonwealth Respite and Carelink Centres](#)

Commonwealth Government centres that provide free and confidential information on support services available locally and within Australia for both people with mental illness and carers. For more, [click here](#).

The Centres also support a Young Carers Program. For more, [click here](#).

Community Services NSW

Community Services NSW is the part of the NSW Government that used to be called the Department of Community Services or DoCS. For more, [click here](#).

Guardianship Tribunal

The Guardianship Tribunal is a legal Tribunal in NSW. Its role is to assist with decision-making for people with disability who lack the capacity to make certain decisions for themselves. For more, click [here](#).

Health Care Complaints Commission

The Health Care Complaints Commission (HCCC) is a NSW organisation that deals with complaints against health care practitioners and health care providers in NSW. These can be complaints against individuals or services, such as hospitals or medical centres. For more, click [here](#).

Indigenous Disability Advocacy Service

An organisation that gives advocacy support to Aboriginal people with disability, their families and carers living in western Sydney and other area in NSW. For more, click [here](#).

Intellectual Disability Rights Service

A Community Legal Centre that provides free legal services to people with intellectual disability in relation to their legal rights. For more, click [here](#).

[Kids Helpline](#)

This service provides counselling and referrals for young people 25-years-old and under. It has a 24-hour telephone helpline and an e-mail or and web counselling service. For more, [click here](#).

LawAccess

A free state-wide telephone service that provide legal information and advice and referrals to legal assistance providers and related organisations. For more, click [here](#).

Legal Aid NSW

[The NSW Government agency that is responsible for providing legal aid grants to assist people to pay for legal services and for providing legal services mainly in criminal and family law cases.](#)

[Link Up NSW](#)

An organisation that helps Aboriginal and Torres Strait Islander people find lost relatives. Link Up provides counselling, research and support services for Aboriginal and Torres Strait Islander people who are trying to find lost relatives or have made contact with lost relatives. For more, click [here](#).

Mental Health Advocacy Service

A Legal Aid NSW unit that provides free legal services to people with mental illness in relation to mental health law. For more, click [here](#).

[Mental Health Respite Program](#)

This is a Commonwealth Government program that provides a range of flexible respite options for carers of people with mental illness or intellectual disability. For more, [click here](#).

Mental Health Review Tribunal

The Mental Health Review Tribunal is a multi-member tribunal that has wide powers under the *Mental Health Act 2007* (NSW) and is involved in making and reviewing orders about the treatment of people with mental illness, such as treatment of involuntary patients in psychiatric facilities or treatment in the community, the treatment and discharge of forensic patients and the making of financial management orders. For more, click [here](#).

Multicultural Disability Advocacy Association

A community advocacy organisation that works with people from culturally and linguistically diverse backgrounds who have disability. For more, click [here](#).

Multicultural Mental Health Australia

A national organisation focused on mental health and suicide prevention for Australians from culturally and linguistically diverse backgrounds. For more, [click here](#).

[Multicultural Problem Gambling Service for NSW](#)

A service that helps problem gamblers from CALD communities living in NSW and their families by providing quality and accessible counselling, treatment and support services. For more, [click here](#).

NSW Disability Discrimination Legal Centre

A Community Legal Centre that provides free legal services to people with disability in relation to disability discrimination law. For more, click [here](#).

NSW Health

NSW Health is the name of the Department of Health in NSW. It is responsible for monitoring the performance of the NSW public health system.

[NSW Institute of Psychiatry](#)

The Institute offers a Graduate Mental Health Program which is a professional skills-based program for people working in the mental health field. For more click here.

NSW Ombudsman

This NSW Government agency deals with complaints and concerns about NSW Government departments or agencies other than those that provide a health care service. For more, click [here](#).

NSW Refugee Health Service

A NSW Government service that supports health care workers who are working with refugees and provides health assessments and referrals for refugees. For more, click [here](#).

NSW [Service for the Treatment and Rehabilitation of Torture and Trauma Survivors \(STARTTS\)](#)

An organisation that helps refugees and asylum-seekers living in NSW to recover from their experience and to settle in Australia. It provides mental health services, personal support programs and training. For more, click [here](#).

NSW Public Trustee and Guardian

A NSW Government agency that can be appointed as financial manager for you if you have a disability. The NSW Public Trustee and Guardian also manage wills and powers of attorney for the general community. For more, click [here](#).

Official Visitor

Official Visitors are appointed by the NSW Minister for Health to visit people in mental health inpatient facilities in NSW and are available to assist consumers on community treatment orders. For more, click [here](#).

People with Disability Australia

A community advocacy organisation that works with people who have disability on both individual problems and systemic issues facing people with disability. For more, click [here](#).

Private Health Insurance Ombudsman

This Ombudsman deals with complaints about private health insurance. For more, click [here](#).

Public Guardian

The Public Guardian can be appointed as guardian for you if you have a disability. For more, click [here](#).

[Sane Australia](#)

An organisation that runs programs and campaigns to improve the lives of people with mental illness, their family and friends. Sane Australia also has a telephone and online helpline. For more, [click here](#).

[Schizophrenia Fellowship of NSW Inc](#)

An organisation with a number of programs that assist carers and families of people with mental illness including a telephone information service. For more, [click here](#).

Tenants' Union of NSW

A Community Legal Centre that provides free legal services to tenants in NSW about their rights and obligations as tenants. For more, click [here](#).

The Aged Care Rights Service (TARS)

A Community Legal Centre that provides free legal services in relation to aged care services. For more, click [here](#).

[Transcultural Mental Health Centre](#)

A centre that provides a range of information and services for people with mental illness from CALD backgrounds, their carers and communities.

For more, [click here](#).

Welfare Rights Centre

A Community Legal Centre that provides free legal services in relation to social security and Centrelink. For more, click [here](#).

[Young Carers Australia](#)

Carers Australia has a website that provides information on how to get help and support, as well as how to deal with young carer-specific situations and associated emotions. For more, [click here](#).

[Young Carers NSW](#)

This website provides information on support and counselling services, has a section for young carers with families from non-English speaking backgrounds, as well as information for specific age groups. For more, [click here](#).

Disclaimer

- The legal and other information contained in this Section is up to date to **Monday, 2 May 2011**.
- This Manual only refers to the law and practices applying to the Australian state of New South Wales (NSW).
- MHCC does not guarantee the accuracy nor is responsible for the content or the currency of the content of external documents and websites linked to this Manual.