

# Amendments to the *Mental Health Act 1986*

Program management circular

## Key message

The Mental Health Act has been amended in relation to involuntary treatment orders, treatment plans and special leave of absence for security patients. The amendments came into effect on 3 August 2005.

## Purpose

To provide advice about recent changes to the *Mental Health Act 1986*.

## Background

The *Health Legislation (Miscellaneous Amendments) Act 2005* ('the amending Act') was passed by the Victorian Parliament and came into effect on 3 August 2005. It amends the Mental Health Act in three key areas: involuntary treatment orders (ITOs), treatment plans and special leave of absence for security patients.

The amendments to ITOs and treatment plans were developed in response to feedback received during information sessions provided by the Mental Health Branch of the Department of Human Services in 2004 to implement the *Mental Health (Amendment) Act 2003*.

## Main changes to the Act

### Involuntary treatment orders

When ITOs were introduced into the Mental Health Act, the power to make an ITO was given to registered medical practitioners employed by an approved mental health service and mental health practitioners. However, a registered medical practitioner could only make an ITO if they were in an approved mental health service and a mental health practitioner could only make an ITO if they were in the community. This limitation was considered unnecessarily restrictive of clinical practice.

The current amendments have removed this restriction on the location where an ITO can be made. Mental health practitioners and registered medical practitioners employed by an approved mental health service can now make an ITO in either setting.

### Involuntary treatment orders made at an approved mental health service

If an ITO is made at an approved mental health service, the person must be detained in the service. However, a further amendment empowers the registered medical practitioner or a mental health practitioner to release the person from detention to await the statutory examination by the authorised psychiatrist (the 'within 24-hour' review) if they have considered the criteria in section 8(1) of the Mental Health Act and consulted with the authorised psychiatrist.

## About program management circulars

The information provided in this circular is intended as general information and not as legal advice. Mental health service management should ensure that policies and procedures are developed and implemented to inform staff about changes to relevant legislation.

If mental health staff have queries about individual cases or their obligations under the *Mental Health Act 1986*, service providers should obtain independent legal advice.

## Further information

Electronic copies of the revised Mental Health Act, the amending Act, the explanatory memorandum and the second reading speech are available to download from the Parliamentary website: [www.dms.dpc.vic.gov.au](http://www.dms.dpc.vic.gov.au). Information is also available on the mental health website at: [www.health.vic.gov.au/mentalhealth](http://www.health.vic.gov.au/mentalhealth).

It is expected that this would be a clinical decision and would only occur where the practitioner and the authorised psychiatrist believe appropriate treatment can be safely provided in the community during the 24-hour period. This amendment is consistent with the objects of the Act to provide treatment in the least possible restrictive environment.

A flowchart outlining the processes for commencing involuntary treatment, that incorporates these changes, is attached.

## Treatment plans

The Mental Health Act previously required the authorised psychiatrist to personally deliver and discuss each patient's treatment plan with the person. This requirement has proved impractical given the small number of authorised psychiatrists relative to other members of the treating team. Further, it did not acknowledge the important contribution that each member of the treating team makes in both developing and implementing treatment plans.

The Mental Health Act has been amended with the effect that in addition to the authorised psychiatrist, a registered medical practitioner, the person's case manager and other members of the treating team (to be prescribed in the Mental Health Regulations) will have the option of delivering the plan and discussing it with the patient.

The authorised psychiatrist will continue to be responsible for preparing and reviewing treatment plans.

## Special leave of absence for security patients

The Act has been amended to allow security patients to be granted up to a maximum of seven days special leave for medical treatment. Previously special leave could only be granted for a maximum of 24 hours. This change is consistent with the equivalent special leave provision in the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* that allows forensic patients to be granted special leave for a maximum of seven days for medical treatment.

## Implementation

The amendments came into effect on 3 August 2005.

Service providers should review and revise policies and procedures to incorporate the changes as necessary.

The Mental Health Regulations 1998, statutory forms (schedules) and other legal forms (MHA forms) prescribed by the Department of Human Services will be revised by November 2005. In the meantime, services should continue to use and accept existing forms.

**PROCEDURE FOR MAKING A REQUEST AND RECOMMENDATION FOR INVOLUNTARY TREATMENT AS AN INPATIENT OR IN THE COMMUNITY UNDER THE MENTAL HEALTH ACT 1986**

Revised August 2005

**CRITERIA FOR INVOLUNTARY TREATMENT****Section 8(1) Mental Health Act 1986:**

- (a) the person appears to be mentally ill (*a person is mentally ill if he or she has a mental illness, being a medical condition that is characterised by a significant disturbance of thought, mood, perception or memory*); and
- (b) the person's mental illness requires immediate treatment and that treatment can be obtained by the person being subject to an involuntary treatment order; and
- (c) because of the person's mental illness, involuntary treatment of the person is necessary for his or her health or safety (whether to prevent a deterioration in the person's physical or mental condition or otherwise) or for the protection of members of the public; and
- (d) the person has refused or is unable to consent to the necessary treatment for the mental illness; and
- (e) the person cannot receive adequate treatment for the mental illness in a manner less restrictive of his or her freedom of decision and action.

**PRESCRIBED PERSON**

A 'prescribed person' is a member of the police force, an ambulance officer or a:

- Registered medical practitioner
- Registered nurse
- Registered psychologist
- Social worker
- Occupational therapist—employed to provide care and treatment to persons with a mental disorder in an approved mental health service, a State child and adolescent psychiatry service, any premises licensed under section 75 of the Act, a hospital admitting or caring for persons with a mental disorder, a mental health service of a community health centre, a psychiatric outpatient clinic or a community mental health service.

**APPROVED MENTAL HEALTH SERVICE**

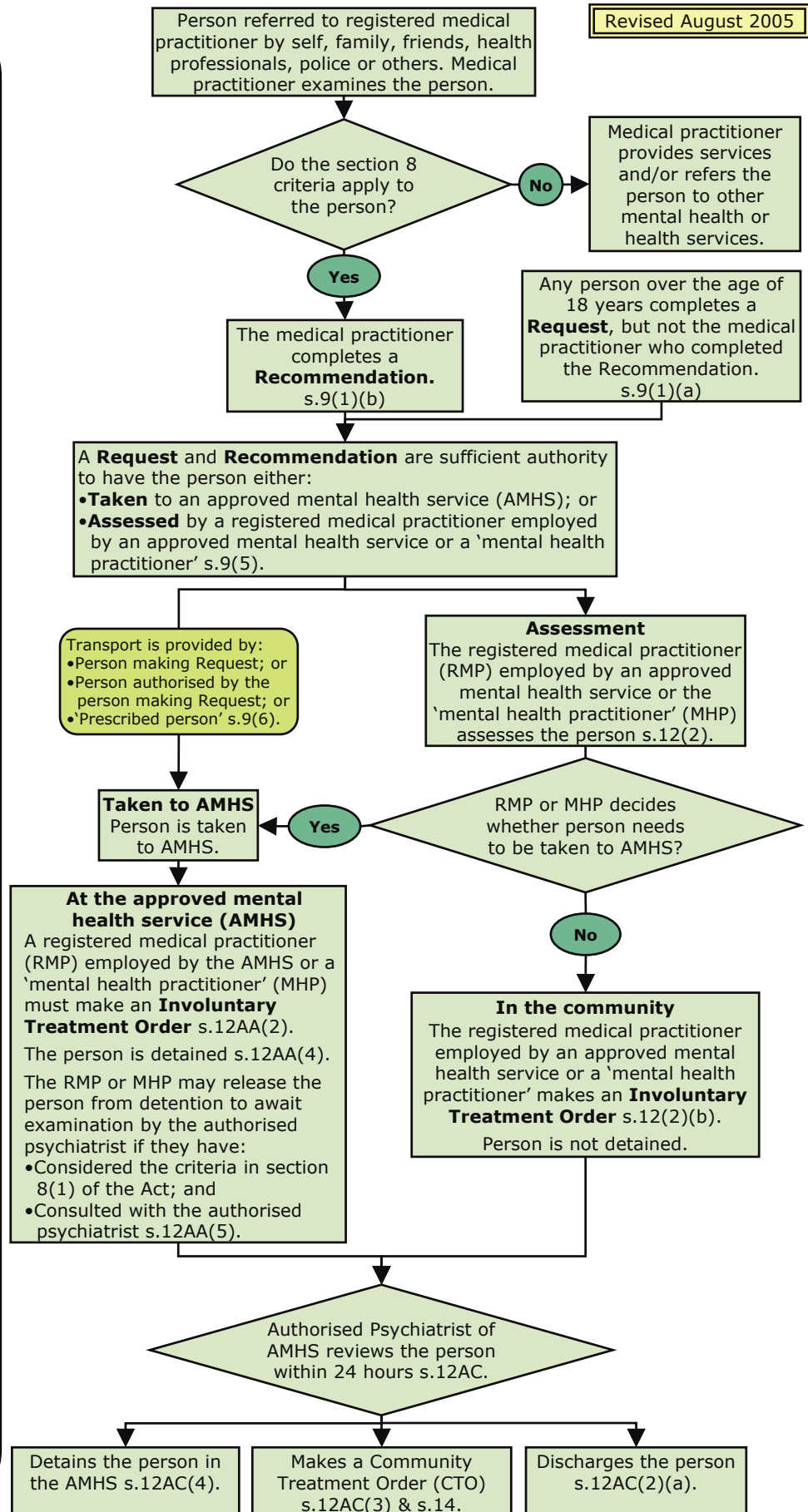
An approved mental health service (AMHS) is any service or premises that has been proclaimed by the Governor in Council under section 94 of the **Mental Health Act 1986** as a place at which treatment can be provided to patients under the Act. Typically, public hospitals that have an acute psychiatric in-patient unit are proclaimed as approved mental health services.

**MENTAL HEALTH PRACTITIONER (MHP)**

A 'mental health practitioner' is a member of the following categories of health professionals employed by an approved mental health service and engaged in the provision of acute psychiatric assessment and treatment functions in the community:

- Registered nurses
- Registered psychologists
- Social workers
- Occupational therapists

Typically mental health practitioners are members of community based mental health teams, such as Crisis Assessment & Treatment Services (CATS) or integrated teams with a crisis, assessment and treatment function.



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