

What You Need to Discuss with Patients: A Reference Guide for Clinicians

The *Mental Health Act 2016* requires persons, such as authorised doctors and authorised mental health practitioners (AMHP), to *tell, explain or discuss* particular matters with patients.

What matters are required to be discussed with patients?

The matters that must be explained or discussed with patients are related to the following areas:

- Examination Authorities
- Recommendations for assessment
- Assessments
- Treatment Authorities
- Certain matters affecting persons in custody
- Psychiatrist reports
- Examination of persons – Magistrates Court and General
- Treatment and care of patients
 - Treatment authorities
 - Forensic orders
 - Treatment support orders
 - Obligations in relation to treatment in the community
- Regulated treatment
- Rights of patients and others
- Authorised Mental Health Service (AMHS)
 - Transport
 - Security

Outlined below are details of the information that must be explained or discussed with patients.

How should the discussion occur?

The person who is required to discuss or explain a matter with a patient must:

- take reasonable steps to ensure the patient understands the information

- tell or explain the matter to, or discuss the matter with the patient in an appropriate way having regard to the patient's age, culture, mental illness, ability to communicate and any disability, and
- tell or explain the matter to, or discuss the matter with the patient in a way the patient is most likely to understand, for example, in the patient's language.

When should these matters be discussed with nominated support persons or other parties?

The person must also explain or discuss the matter with a nominated support person, if one has been appointed.

If the patient does not have a nominated support person, the person must explain or discuss the matter with one or more of the patient's family, carers or other support persons.

However, this does not apply in the following specific circumstances:

- the patient requests, when the patient has capacity, that the communication not take place
- the person is not readily available or willing for the communication to take place (for example, the person is not willing to visit the patient in hospital or cannot be contacted by phone), or
- the communication with the person is likely to be detrimental to the patient's health and wellbeing (for example, the person has previously disrupted the patient's treatment and care resulting in the patient's condition deteriorating).

Health practitioner or other person	Tell, explain, discuss	Section of Act
Examination authorities		
Doctor or AMHP	Before exercising a power in relation to an examination authority, a doctor or AMHP must make a reasonable attempt to tell the person an examination authority has been made and explain to the person the nature and effect of the authority. However, this is not required if it may interfere with actioning the examination authority.	35
Recommendations for assessment		
Doctor or AMHP	Before detaining a person to make a recommendation for assessment, the doctor or AMHP must make a reasonable attempt to tell the person a recommendation for assessment will be made, and explain to the person the nature and effect of a recommendation and that the person will be detained for not more than one hour for the recommendation to be made.	38
Doctor or AMHP	As soon as practicable after deciding to make recommendation for assessment, the doctor or AMHP must tell the person of the decision, and explain to the person the effect of the recommendation.	40
Assessments		
Authorised doctor	An authorised doctor making an assessment of a person subject to a recommendation for assessment must discuss the assessment with the person.	44
Authorised doctor	If an authorised doctor decides not to make treatment authority, they must tell the person of the decision and explain its effect to the person.	47
Treatment authorities		
Authorised doctor	In deciding the nature and extent of the treatment and care to be provided to the person under the treatment authority, the authorised doctor must discuss the treatment and care to be provided with the person.	53
Authorised doctor	An authorised doctor must explain to a person the reasons why the authorised doctor did not follow an advance health directive: <ul style="list-style-type: none"> • if the authorised doctor decides to make a treatment authority despite the person having an advance health directive, or • if the nature and extent of the treatment and care decided by the authorised doctor is inconsistent with the views, wishes and preferences of the person expressed in the advance health directive. 	54
Authorised doctor	As soon as practicable after making a treatment authority for a person, the authorised doctor must tell the person of the decision and explain its effect to the person.	55
Authorised psychiatrist	As soon as practicable after making a decision on a review of a treatment authority, the authorised psychiatrist must tell the person of the decision and explain its effect to the person.	58

Health practitioner or other person	Tell, explain, discuss	Section of Act
Persons in custody		
Doctor or AMHP	As soon as practicable after making a transfer recommendation for a person in custody, the doctor or AMHP must tell the person of the making of the transfer recommendation and explain its effect to the person.	68
Authorised doctor	As soon as practicable after making a recommendation that a person remain in an AMHS as a classified patient, the authorised doctor must tell the person of the making of the recommendation and explain its effect to the person.	74
Authorised doctor	If a person in custody becomes a classified patient (involuntary) or classified patient (voluntary), an authorised doctor must explain to the person how the Act applies to the person.	75
Authorised doctor	Where the chief psychiatrist is notified of events that may lead to a classified patient returning to custody, an authorised doctor must tell the classified patient of the notice and explain its effect to the patient.	81
Authorised doctor	If the chief psychiatrist decides to return a classified patient to a place of custody, as soon as practicable after receiving the notice, an authorised doctor must tell the classified patient of the decision and explain its effect to the patient.	82
Psychiatrist reports		
Administrator	As soon as practicable after an administrator becomes aware a person is entitled to request a psychiatrist report, the administrator must tell the person a request may be made for a psychiatrist report in relation to the charge of the serious offence and explain to the person the effect of a request if made. If the person is a minor, the administrator must also explain the effect of a request to one or more of the minor's parents unless this does not appear to be in the minor's best interests.	89
Examination of persons—Magistrates Court		
Authorised doctor	If a person is examined under an examination order and the authorised doctor makes a recommendation for the person's treatment and care, the authorised doctor must explain to the person the benefits of being treated voluntarily in accordance with the recommendation.	178
Treatment and care of patients—general		
Authorised doctor	An authorised doctor must examine a patient and decide the nature and extent of treatment and care to be provided to the patient. In deciding the treatment and care to be provided to the patient, the authorised doctor must discuss the treatment and care to be provided with the patient.	201
Treatment and care of patients—treatment authorities		
Authorised doctor	In making a regular assessment of a patient subject to a treatment authority, an authorised doctor must discuss the assessment with the patient.	205

Health practitioner or other person	Tell, explain, discuss	Section of Act
Authorised doctor	An authorised doctor must tell a patient of a revocation of the patient’s treatment authority as soon as practicable after the revocation.	206
Authorised doctor	If the chief psychiatrist revokes a treatment authority, an authorised doctor must tell the patient of the revocation as soon as practicable after the revocation.	208
Authorised doctor	If an authorised doctor intends to amend a treatment authority to change the category, limited community treatment or conditions, the authorised doctor must tell the patient of the proposed amendment and explain the effect of the amendment to the patient.	209
Treatment and care of patients—forensic orders		
Authorised doctor	If an authorised doctor intends to amend a forensic order to change the category, limited community treatment or conditions, the authorised doctor must tell the patient of the proposed amendment and explain the effect of the amendment to the patient.	212
Treatment and care of patients—treatment support orders		
Authorised doctor	If an authorised doctor intends to amend a treatment support order to change the category, limited community treatment or conditions, the authorised doctor must tell the patient of the proposed amendment and explain the effect of the amendment to the patient.	216
Treatment and care of patients—obligations in relation to treatment in the community		
Authorised doctor	<p>If a patient subject to a treatment authority, forensic order or treatment support order is to receive treatment in the community outside an authorised mental health service (AMHS), an authorised doctor must decide:</p> <ul style="list-style-type: none"> a) the treatment and care to be provided to the patient while receiving the treatment in the community b) the patient’s obligations while receiving the treatment in the community, including, for example, obligations to attend scheduled appointments with the patient’s treating health service. <p>In deciding the matters above, the authorised doctor must discuss the matters with the person. Before the patient physically leaves the AMHS to receive treatment in the community, the authorised doctor must explain to the patient the matters.</p>	220

Health practitioner or other person

Tell, explain, discuss

Section of Act

Regulated treatment

Doctor	Before a person gives informed consent to the person's treatment by regulated treatment, the doctor must explain , in a form and language able to be understood by the person, about: <ul style="list-style-type: none">a) the purpose, method, likely duration and expected benefit of the treatmentb) possible pain, discomfort, risks and side effects associated with the treatmentc) alternative methods of treatment available to the persond) the consequences of not receiving treatment	234
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Doctor	If a doctor makes an application to the Mental Health Review Tribunal for approval to perform electroconvulsive therapy for the patient, the doctor must, as soon as practicable after the application is made and to the extent practicable: <ul style="list-style-type: none">a) tell the patient the application has been madeb) explain the application to the patient.	236
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Rights of patients and others

Administrator	After admission of a patient to an AMHS, the administrator of the AMHS must explain the statement of rights to the patient.	278
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AMHS—transport

Authorised person	Before an authorised person transports an absent person, the authorised person must tell the person the authorised person is detaining the person and transporting the person to an AMHS or public sector health service facility and explain to the person how taking action may affect the person.	366
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AMHS—security

Doctor or health practitioner	If a doctor or health practitioner believes a patient may have possession of a harmful thing, the doctor or health practitioner may carry out a search. Before carrying out a search, the doctor or health practitioner must tell the patient the reasons for the search and how it is to be carried out.	388
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Authorised security officer	On the patient's admission to, or entry into, a high security unit or other approved service, an authorised security officer may carry out a search. Before carrying out a search, the authorised security officer must tell the patient the reasons for the search and how it is to be carried out.	390
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Searcher	Before carrying out a search requiring the removal of clothing, one of the searchers must tell the person: <ul style="list-style-type: none">• that the person will be required to remove their clothing during the search• why it is necessary to remove the clothing.	400
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