CHAPTER 3 - INVOLUNTARY ASSESSMENT, JUSTICES EXAMINATION ORDERS AND EMERGENCY EXAMINATION ORDERS

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1. Introduction

The Mental Health Act 2000 (the Act) sets out processes for a person to be assessed for the purpose of determining whether involuntary treatment and care is required. The involuntary assessment process relies on assessment documents (that is, request for assessment and recommendation for assessment forms) being completed for the person.

The Act also provides examination processes (i.e. justices examination orders and emergency examination orders) that may need to precede involuntary assessment in certain circumstances (for example, when it is not otherwise possible to access the appropriate health professional). These processes enable the person to be examined for the purpose of determining whether assessment documents can be made.

The provisions of the Act summarised below can be read in full in the Mental Health Act 2000, Chapter 2 (Involuntary assessment).

1.1 Director of Mental Health resources

Director of Mental Health resources of particular relevance to this chapter include:

- Fact sheet 2 – Involuntary assessment
- Brochure - Information about justices examination orders

2. Involuntary assessment

2.1 Assessment documents (s16)

Before a person can be assessed for mental illness without consent, two (2) forms (the ‘assessment documents’) must be completed. The assessment documents are:

- request for assessment; and
- recommendation for assessment.

These documents authorise assessment only and do not authorise treatment or care for mental illness. Involuntary treatment of mental illness requires separate authorisation (see chapter 4).

Request for assessment (s17-18, 24)

A request for assessment can be made by any person who:

- is an adult (18 years and over);
- reasonably believes the person has a mental illness of a nature, or to an extent, that involuntary assessment is necessary; and
has observed the person within three (3) days before making the request.

A person cannot make a request for assessment if the recommendation for assessment is made by a relative or their employer. Note that two employees of the same health service can make the assessment documents for a person.

‘Relative’ includes:

- the person’s spouse, including de facto partner; and
- a child, grandchild, parent, brother, sister, grandparent aunt or uncle (whether of whole or half blood) of the person or the person’s spouse.

Recommendation for assessment (s19-20, 23-24)

A recommendation for assessment can only be made by a doctor or an authorised mental health practitioner. The doctor or practitioner must:

- have examined the person in the last three (3) days - either in person or by audio-visual link; and
- be satisfied all the assessment criteria apply to the person (see section 2.2 in this chapter).

A doctor or authorised mental health practitioner cannot make a recommendation for assessment if:

- the subject of the recommendation for assessment is a relative of the doctor or practitioner; and/or
- the request for assessment is made by a relative or employee of the doctor or practitioner.

The request for assessment and recommendation for assessment must be made by different people.

Timeframes for request and recommendation (s21-22)

The recommendation for assessment is effective for seven (7) days.

The request for assessment must be made in the seven (7) days before, or no more than seven (7) days after, the recommendation for assessment is made.

The request for assessment, whether made before or after the recommendation for assessment, is in force only while the recommendation for assessment is in force. For example:

- The request for assessment is made on 8 December and the recommendation for assessment is made on 10 December. The
assessment documents are in force until midnight on 17 December (i.e. seven (7) days from when the recommendation for assessment is made).

- The recommendation for assessment is made on 8 December and the request for assessment is made on 10 December. The assessment documents are in force until midnight on 15 December (i.e. seven (7) days from when the recommendation for assessment is made).

2.2 Assessment criteria (s13)

The assessment criteria are consistent with the National Model Mental Health Legislation and the United Nations Principles for the Protection of Persons with a Mental Illness and for the Improvement of Mental Health Care.

The criteria provide a safeguard against inappropriate detention for assessment. A person cannot be detained for assessment unless all the criteria are met. The presence of a mental illness alone is not sufficient justification for involuntary assessment.

In addressing the criterion on the recommendation for assessment, the doctor or practitioner should record the facts upon which their opinion relies (for example, evidence of mental illness observed in the examination, clinical history, evidence of mental illness reported by family and others, etc). Facts known because of personal observation must be distinguished from facts communicated by others.

The doctor or authorised mental health practitioner completing a recommendation for assessment must be satisfied, on the available information, that the person meets all the assessment criteria and each criterion must be addressed on the form.

The assessment criteria are as follows:

(a) the person appears to have a mental illness

The definition of mental illness is discussed in chapter 1 of the Resource Guide.

Note that the criterion is that the person ‘appears’ to have a mental illness. A definitive finding of mental illness is not required. At a minimum, the doctor or authorised mental health practitioner should be satisfied that there is sufficient indication of mental illness to warrant referral for further expert assessment.

As noted in chapter 1, all available information, including a person’s medical and psychiatric history, is relevant to assessing whether a person has a mental illness. Clinical assessments should always be
longitudinal in nature, and take account of the history, in addition to
the current clinical presentation and the presence of observable
phenomena indicative of mental illness. An assessment that does not
take account of the person’s previous psychiatric history is
inadequate.

(b) the person requires immediate assessment

The doctor or practitioner should be satisfied that, having regard to
all of the circumstances, the person’s assessment should not be
delayed.

In addressing the criterion on the recommendation for assessment,
the doctor or authorised mental health practitioner should record the
reasons for the immediacy including, for example, the likely
consequences of not undertaking assessment at this time.

(c) the assessment can properly be made at an authorised mental
health service

Involuntary assessment should only occur if the person has a
condition, or appears to have a condition, that can be properly
assessed at a mental health service.

In addressing the criterion on the recommendation for assessment,
the doctor or practitioner should record information about the
assessment required and how this can be provided at the service (for
example, the patient appears to suffer a psychotic illness which
requires assessment by an authorised doctor).

(d) there is a risk that the person may -

♦ cause harm to himself or herself or someone else; or
♦ suffer serious mental or physical deterioration.

Harm to self or others

The doctor or authorised mental health practitioner should take
account of all of the circumstances in assessing risk of harm. Note
that the criterion is not expressed as ‘imminent risk’, as it is in the
treatment criteria.

The nature of potential harm and degree of risk are relevant
considerations. While risk of physical injury is a paramount
consideration, ‘harm’ is not necessarily limited to physical safety or a
direct threat to physical safety.
For example, information available to the doctor or practitioner may indicate that, as a result of behaviour resulting from mental illness:

- the person is at risk of harm to their social standing and reputation, losing their employment, being subject to criminal charges, suffering significant financial loss, etc.; or
- the person places the safety of others at risk, due to the nature of their employment (for example, operating a public transport vehicle) or their day to day responsibilities (for example, a parent of young children).

In addressing the criterion on the recommendation for assessment, the doctor or practitioner should document the nature of the harm, the degree of risk, and the facts upon which their opinion is based.

**Serious mental or physical deterioration**

An assessment of risk of serious mental or physical deterioration may take account of a number of factors including the nature of the illness, the course of the current presentation and/or the person’s clinical history. It may apply, for example, in relation to a patient whose recent non-compliance has so far resulted in minimal observable deterioration but whose clinical history indicates the need for prompt response to avert significant safety risks.

In addressing the criterion on the recommendation for assessment, the doctor or practitioner should document the basis of the opinion that there is a risk of serious mental or physical deterioration.

**(e) there is no less restrictive way of ensuring the person is assessed**

The doctor or authorised mental health practitioner must be satisfied that there is no less restrictive way of ensuring that the person is assessed.

In addressing the criterion on the recommendation for assessment, the doctor or practitioner should document the reasons involuntary assessment is necessary including, for example, the patient’s history of compliance and recent efforts to engage the person on a voluntary basis.

The following criterion also applies, except where the person is before a Court or in custody and the recommendation for assessment relates to assessment as a classified patient (see chapter 5).
(f) the person -

♦ lacks the capacity to consent to be assessed; or
♦ has unreasonably refused to be assessed

Capacity to consent

The issue of consent relates to the person’s own capacity to consent. If a guardian has been appointed under the Guardianship and Administration Act 2000 (GA Act) for a person, the guardian’s consent to the person’s assessment is not effective.

For the purposes of assessment, ‘capacity’ (defined in the Act’s dictionary) means the person is capable of:

♦ understanding the nature and effect of decisions about the person’s assessment, treatment, care or choosing of an allied person;
♦ freely and voluntarily making decisions about the person’s assessment, treatment, care or choosing of an allied person; and
♦ communicating the decision in some way.


In addressing the criterion on the recommendation for assessment, the doctor or practitioner should document the elements of capacity that are not met and the basis for this opinion.

Unreasonable refusal

‘Unreasonably refused’ is not specifically defined in the Act. Examples of when a person’s refusal could be considered unreasonable include:

♦ when the refusal would put the patient’s safety or the safety of others at risk; and
♦ when the basis of the person’s decision to refuse assessment is not rational.

In addressing the criterion on the recommendation for assessment, the doctor or practitioner should document the basis for the doctor or practitioner’s opinion that the patient’s refusal is unreasonable.
2.3 Taking a person to a health service for involuntary assessment (s25-26)

If assessment documents are made, the person can be taken to an authorised mental health service for involuntary assessment. The person may be taken to any component facility of an authorised mental health service i.e. a community or inpatient facility. Where a service is gazetted as an authorised mental health service, an emergency department is considered to be part of the authorised mental health service.

If an authorised mental health service is not readily accessible (i.e. in remote rural areas), under section 15(b) of the Act, the person can be assessed or examined, but not treated, without their consent in a public hospital. This may be a necessary consideration in rural and remote locations. In these circumstances, the requirements for the commencement of the assessment period in a public hospital are the same as if the person was being assessed in a gazetted authorised mental health service (see section 2.3 Commencement of assessment period of this chapter).

Authority to take the patient to an authorised mental health service (s25)

If assessment documents are made, a health practitioner or ambulance officer is authorised to take the person to the authorised mental health service.

The health practitioner or ambulance officer:

- may take the person to the health service with the help that is needed and may use the minimum force that is necessary and reasonable in the circumstances; and
- must, to the extent that it is reasonable and practicable in the circumstances, tell the person that the assessment documents are in force and explain what this means.

The Act does not prevent a person being transported by someone other than a health practitioner or ambulance officer (for example, a family member or friend). This option should be based on an assessment (usually made by the doctor or authorised mental health practitioner who completes the recommendation for assessment) that the person can be safely conveyed, and that it is in the person’s best interests to enable transportation by someone other than a health practitioner or ambulance officer.
Police assistance (s25)

The Act aims to reduce the stigma associated with involuntary assessment, treatment and care. Accordingly, police are not automatically involved in transporting the patient to an authorised mental health service and should only be involved in this process when necessary.

If required, the health practitioner or ambulance officer may contact the police to request assistance. A request for police assistance form is provided to police in this instance.

If police assistance is requested:

- a police officer must, as soon as reasonably practicable, ensure reasonable help is given; and
- the health practitioner or ambulance officer must still accompany the person to the health service and where practicable, in the same vehicle as police.

The Act provides that, for the purpose of helping to take the person to an authorised mental health service, a health practitioner or ambulance officer is a ‘public official’ under the Police Powers and Responsibilities Act 2000 (the PPR Act). In effect, this gives police the same powers to assist the health practitioner or ambulance officer (for example, to use the minimum force that is necessary and reasonable in the circumstances).

The request for police assistance form should be completed and a copy forwarded to the administrator for placement on the patient’s file.

Entry to places (s511)

If a health practitioner or ambulance officer has authority to take the person to the authorised mental health service for involuntary assessment (that is, the assessment documents have been completed) entry to a place can only occur if:

- the occupier consents (this may be the person for whom the assessment documents are made or other person at the premises such as the property owner, carer, family member, house mate, etc);
- it is a public place that is open to the public at the time of entry; or
- entry is authorised by a warrant.


Note that police are authorised under section 609 of the PPR Act to enter a place if there is an imminent risk of injury to the person, damage to
property or domestic violence. Police may consider using this provision to
gain entry in emergency circumstances.

### 2.4 Commencement of assessment period (s44)

The involuntary assessment period starts once the person is at the
authorised mental health service and the assessment documents are
provided to relevant health service staff.

If the person is a patient in the authorised mental health service (for
example, a voluntary patient at the service or a patient detained under an
emergency examination order), the assessment period starts when the
assessment documents:

- are produced to a **health practitioner** at the health service; or
- are made by health practitioners at the health service.

If the person is not a patient in the health service, the assessment period
starts when the person is received at the health service and the
assessment documents are produced to a **health service employee**.

The health service employee or health practitioner must immediately
record the time on the **recommendation for assessment**.

If the person is not received by a health practitioner, a health practitioner
must immediately be notified.

The assessment period is an initial period of up to 24 hours, which may be
extended for a maximum period of 72 hours. The Act authorises the
person’s detention at the authorised mental health service for the
assessment period.

If the patient absconds during the assessment period, the return
provisions will apply. For more information, see chapter 10 of the
Resource Guide. However the return provisions do not apply if the person
for whom assessment documents have been made absconds prior to the
commencement of the assessment period. In these circumstances, if
there is ongoing concern about the person’s mental state, an application
for a **justice’s examination order** may be appropriate. In more urgent
circumstances (i.e. where there is imminent risk) health service staff may
notify police in accordance with section 147 of the *Hospital and Health
Boards Act 2011*. 
2.5 Preparing an absent without permission prevention and response plan

An absent without permission prevention and response plan is mandatory for involuntary inpatients and is recommended for community patients. It must be based on assessment of the patient’s risk of becoming absent without permission or failure to comply with conditions of leave.

An absent without permission prevention and response plan outlines clinical strategies to mitigate and manage absence without permission risk and actions to be undertaken by the service if the patient becomes absent without permission. It is intended to supplement clinical judgment at the time of an absence without permission event and must be consistent with the requirements of the Absence Without Permission Checklists.

The absent without permission prevention and response plan must be incorporated into care planning and documented in CIMHA and/or the patient’s local service clinical record.

The absent without permission prevention and response plan must be reviewed regularly and amended in line with any changes in the patient’s situation or clinical needs and following any unauthorised absence event.

The administrator must ensure the information system is updated to reflect the commencement of involuntary assessment.

2.6 Assessment by an authorised doctor (s46)

As soon as practicable after the assessment period commences, an authorised doctor must assess the patient to decide if the treatment criteria apply to the patient. The assessment may be carried out by audio-visual link.

The purpose of the assessment is to determine if the person requires involuntary treatment for mental illness. Chapter 4 of the Resource Guide provides information about making an involuntary treatment order.

An entry in the patient’s clinical file documenting the assessment outcome should be made.

2.7 Rights of involuntary patients

As an involuntary patient, the person has a right to be informed of any changes to their involuntary status, be given a copy of their rights and have them explained. In addition the patient can nominate an allied person and have access to a health practitioner or legal adviser of their choice.
Chapter 11 of the Resource Guide provides further information about patient rights.

### 2.8 Extension of assessment period (s47)

The assessment period is an initial period of up to 24 hours. However, this may be extended by an authorised doctor for a further period of not more than 24 hours. The maximum period of detention for assessment is 72 hours.

An extension can be authorised only if the doctor is satisfied that the further period is necessary to carry out or finish the assessment.

The authorised doctor must complete an *extension of assessment period* form to extend the assessment period.

The administrator must ensure the information system is updated to reflect an extension of the assessment period.

### 2.9 Administration of medication during the assessment period

If a person requires urgent health care for a mental condition, but is deemed to have impaired capacity for consenting to treatment, there are provisions within both the Act and the GA Act which may be considered to enable the person to receive treatment and care without consent. However, it cannot be assumed that if one scheme does not apply then the other scheme will.

**Assessing capacity**

Both Acts require that the person has first been given the opportunity to provide informed consent to any proposed treatments and the nature of the treatments are explained to them in a way they can understand.

Capacity is a legal term which is used in a variety of contexts. It is not a global concept and therefore, must be defined in accordance with the matter of the decision that is to be made.

The definition of capacity in the GA Act is consistent with the definition in the Act (see section 2.2 of this chapter). However, under the Act, the issue of capacity to consent relates to the person’s own capacity to consent. If a guardian has been appointed under the GA Act for a person, the guardian’s consent is not effective.

It must be noted that capacity can fluctuate with the person’s mental state, time of day and medication side-effects. Capacity can be regained and it may deteriorate. Regular assessment of capacity is imperative, with documentation of the questions asked and overall clinical impression of the person’s capacity.
Administration of medication under the Mental Health Act 2000

The Act is the appropriate legislative scheme for people who require involuntary assessment and/or treatment for a mental illness. The Act separates the involuntary assessment processes from the involuntary treatment processes. This is to ensure that mental health treatment is only given without the person’s consent if they have been assessed by an authorised doctor and it is determined that they have a mental illness and meet the criteria for the making an involuntary treatment order.

Medication can only be administered during the assessment phase in the following situations:

- when the person is being transported to an authorised mental health service on assessment documents (section 26);
- if the person is being moved within an authorised mental health service (section 169N (1)(a)); and
- if the person is being transferred from an authorised mental health service to another authorised mental health service or the forensic disability service (section 169N (1)(b)).

If medication is considered necessary for the person’s safe transport to a gazetted authorised mental health service, it should only be administered immediately prior to or during the transportation. The Act provides that:

- medication may be administered to the person only if a doctor is satisfied it is necessary to ensure the safety of the patient or others while being moved or transferred;
- medication must be administered by a doctor, or a registered nurse under the instructions of the doctor;
- the doctor’s instructions must include the name of the medication, the dose, route and frequency of administration;
- the doctor or nurse who administers the medication must keep a written record of the medication administered as well as the dose, route and frequency; and
- medication may be administered with the help, and using the minimum force that is necessary and reasonable in the circumstances.

Administration of medication under the Guardianship and Administration Act 2000

The GA Act provides a scheme for decision making regarding health care and personal and financial matters for adults (i.e. a person aged 18 years or over) with impaired capacity.

The GA Act defines ‘health care’ of an adult, as care and treatment of, or a service or a procedure to diagnose, maintain, or treat the adult’s physical or mental condition. The care and treatment must be carried out by, or under the direction or supervision of, a health provider. (See Schedule 2, Section 5(1)).
Section 63 of the GA Act provides that health care, other than special health care, of an adult may be carried out without consent if a health provider considers that an adult has impaired capacity for the health matter concerned and either:

- the health care should be carried out urgently to meet imminent risk to the adult’s life or health, unless the health provider knows the adult objects to the health care in an advance health directive; or

- the health care should be carried out urgently to prevent significant pain or distress to the adult and it is not reasonably practicable to get consent from a substitute decision-maker under the GA Act or the Powers of Attorney Act 1998 (PA Act).

However, unless the urgent health care is required to meet imminent risk to the adult’s life or health, it should not be carried out if the health care provider knows the adult objects to the health care (i.e. those wishes are known and were expressed when the patient had capacity), unless:

- the adult has minimal understanding or no understanding of what the health care involves and/or why the health care is required; and

- the health care is likely to cause the adult no distress or only temporary distress that is outweighed by the benefit to the adult of the health care.

A substitute decision maker under the GA Act or PA Act in the following order of precedence:

- an attorney for personal matters appointed under an Advance Health Directive;
- a guardian for health care matters appointed by the Queensland Civil and Administrative Tribunal;
- an attorney for personal matters appointed under an Enduring Power of Attorney;
- Statutory Health Attorney (the first, in listed order, of the following people who is readily available and culturally appropriate to exercise power for the matter):
  - spouse (includes de facto) if the relationship is close and continuing;
  - carer if over 18 and unpaid (excluding Carer Payment/Allowance);
  - close friend or relation if over 18 and not a paid carer;
  - Public Guardian\(^1\).

\(^1\) The Public Guardian can be contacted where there is dispute between Statutory Health Attorneys or other substitute decision makers
Urgent health care under section 63 of the GA Act could include the administration of medication (sedation) to a person for the purposes of preventing imminent risk to the adult’s life or health or to prevent significant pain or distress to the adult.

**Decision making about the application of a legislative scheme**

Authorised mental health services should have effective systems in place to ensure that people on assessment documents are assessed in a timely manner by an authorised doctor to decide whether the person meets the criteria for an *involuntary treatment order*. Any need for urgent health care, including the administration of medication while a person is being assessed for a mental illness should be considered on a case by case basis, taking account of the person’s presentation and information available. Clinical reasoning should be used to make a judgement regarding what is deemed ‘urgent health care’.

If the person requires urgent health care, the health practitioner should firstly assess whether the person has had the opportunity or has the capacity to provide consent. In all circumstances where it is deemed that urgent health care (i.e. administration of medication) is necessary for a mental health condition and the person is unable to give consent for this treatment, the provisions of the Act must be considered before other legislative frameworks. It is recognised that in some circumstances, a mental health assessment is not appropriate or is impractical, for example, where the person is exhibiting challenging behaviours or is affected by alcohol and/or other drugs.

In these circumstances, the authorised doctor should first consider extending the assessment period for a further period of up to 24 hours (noting that section 47 of the Act requires that the person must not be detained for more than a total of 72 hours under the assessment period).

If an *involuntary treatment order* is not made, the person may only be treated with their consent or subject to the GA Act.

In certain circumstances where a mental health assessment is not appropriate or is impractical or there is insufficient time to complete the assessment process, for example, where the level of violence exhibited by the person may cause an imminent risk to the safety of the person or others, the provisions of the GA Act may be considered.

In these circumstances, health practitioners should first make reasonable efforts to ascertain whether the person has an advance health directive and comply with directions contained in this directive. In the absence of an advance health directive instruction, before administering medication, the health practitioner should then make reasonable enquiries to establish
whether consent is available from a substitute decision maker under the GA Act and PA Act.

After these steps have been followed, the health practitioner may provide urgent health care without consent if, based on comprehensive clinical assessment, including risk assessment, the health practitioner determines that this would be the most appropriate medical intervention.

Where decisions are being made pursuant to the GA Act by a substitute decision maker or in urgent circumstances, it must be kept in mind that the principles of the GA Act apply. These principles include acting in the least restrictive way, only exercising a power that is necessary and appropriate to maintain or promote the adult’s health or well being, and in all circumstances acting in the adult’s best interests.

General and HealthCare Principles are available on the Public Guardian’s website at:
and

The health practitioner must document the factors involved in decision-making about the application of either the Act or the urgent health care provisions of the GA Act in the person’s clinical record.

2.10 Administrator responsibilities

Review of assessment documents
The administrator must review the patient assessment documents as soon as possible after admission to ensure compliance with legislative requirements. Any errors or omissions identified should be rectified without delay.

Notifications (s45)
The administrator must ensure that the following persons are told about the patient’s assessment and status as an involuntary patient:
- the patient;
- the patient’s allied person;
- if the patient is a minor – a parent or guardian;
- a personal attorney, if the person has one; and
- a personal guardian, if the person has one.
2.11 Absence without permission during assessment period

Requirements relating to the return of patients absent without permission (see chapter 10 of the Resource Guide) apply to patients who absent themselves during the assessment period. The authority to return the patient ends when the detention period ends. The authorised doctor may extend the assessment period to enable the patient’s return and completion of the assessment.

2.12 Outcome of assessment

As a result of the person’s assessment, an involuntary treatment order may or may not be made.

When an involuntary treatment order is not made (s48)

If an involuntary treatment order is not made by the end of the assessment period:

- the person ceases to be an involuntary patient;
- the authorised doctor must complete the patient ceased to be an involuntary patient form;
- the doctor must tell the person that their involuntary status has ceased and ensure that the person understands that they are free to leave the service;
- the administrator must make arrangements for the person to return to the place from which they were taken for assessment or to another place that they reasonably ask to be taken; and
- an entry in the clinical file documenting the outcome should be made.

The person may remain as a voluntary patient of the authorised mental health service if consenting to further assessment or treatment.

The administrator must ensure the information system is updated to reflect that the patient’s involuntary assessment status has ended.

When an involuntary treatment order is made

If the authorised doctor is satisfied that the treatment criteria apply, the doctor may make an involuntary treatment order for the patient. Further information about involuntary treatment orders is provided in chapter 4 of the Resource Guide.

The administrator must ensure the information system is updated to reflect the making of an involuntary treatment order.
3. Justices Examination Orders

A justices examination order authorises a doctor or authorised mental health practitioner to examine the person to decide whether a recommendation for assessment should be made. It also authorises entry to a place to conduct the examination where necessary.

A justices examination order may be appropriate where there is concern that a person needs to be assessed, but it has not been possible for the person to be examined by a doctor or an authorised mental health practitioner for the purpose of deciding whether a recommendation for assessment should be made.

Seeking a justices examination order may not be appropriate in urgent circumstances where there is an imminent risk of harm (refer to section 4 of this chapter – emergency examination orders).

3.1 Application for a justices examination order (s27)

Any person can make an application for a justices examination order.

An application for a justices examination order can be made to a magistrate or Queensland justice of the peace qualified under the Justices of the Peace and Commissioners for Declarations Act 1991. If the application is made to a magistrate, the applicant files the application with the registrar of a Magistrates Court. If the application is made to a justice of the peace, the applicant gives the form to the justice of the peace.

The application must be sworn and state the reason that the applicant believes the person has a mental illness and requires a justices examination order.

Penalties apply to an applicant who gives information that the applicant knows is false or misleading.


Right to Information (previously known as Freedom of information)

Any person has the right to apply for access to documents relating to a justices examination order under the Right to Information Act 2009 (RTI Act) or Information Privacy Act 2009 (IP Act). This includes applying to access an application for a justices examination order.

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2 The RTI Act and IP Act commenced on 1 July 2009, replacing the Freedom of Information Act 1992 and Information Standard 42A (Privacy for Queensland Health) and Information Standard 42 (Privacy for other Queensland Government agencies). The RTI Act governs applications for non-
Being identified as a person instrumental in the process may be of concern to the applicant and others involved, and could potentially put such persons at risk. While the person subject to a *justices examination order* is normally entitled to see the order, this entitlement does not extend to the application for a *justices examination order*. The information and identity of those who are signatories to the application for a *justices examination order* are treated as confidential in the process of carrying out the examination.

This information is only potentially accessible if a formal written access application is made under the RTI Act or IP Act. If an access application is made, the Right to Information decision-maker will consider whether there are any grounds to deny access to information, or whether there are any special conditions that should apply to the way in which the information is provided to the access applicant.

It is unlikely that the decision-maker will grant access to JEO application documents and this decision has been upheld by the Office of the Information Commissioner in a number of instances.

Where there is concern about information possibly being released in response to an access application, a brief note may be attached to the application for a *justices examination order*, stating the reasons for this concern and the need for further consultation in the event that an access application is made. This will alert the Right to Information decision-maker that special consideration is required in determining whether information should be released.

Specific issues related to Right to Information can be discussed with the Department of Health Privacy and Right to Information Unit, Hospital and Health Service RTI/IP decision-makers or the Office of the Information Commissioner.

### 3.2 Making a *justices examination order* (s28)

A magistrate or Queensland justice of the peace may make a *justices examination order* only if the magistrate or Queensland justice of the peace reasonably believes:

- the person has a mental illness;
- the person should be examined by a doctor or authorised mental health practitioner to decide whether a *recommendation for assessment* should be made; and

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personal information; the IP Act governs applications for the applicant's own personal information.
the examination cannot be properly carried out unless the order is made.

The magistrate or justice of the peace should not be an employee of an authorised mental health service or an employee of the person making the application for a justices examination order.

The magistrate or justice of the peace may wish to seek advice from mental health service staff in relation to the grounds of application. For example, the magistrate or justice may wish to obtain information about whether a particular behaviour/s might be indicative of mental illness.

There is no requirement that the applicant has seen the person, however, where they have not, the magistrate or justice of the peace may wish to seek corroborating information.

**Procedures after making a Justices Examination Order s29**

If a *justices examination order* is made by a magistrate, the registrar of the Magistrates Court must send the order and a copy of the application to the administrator. The order is usually sent to the service closest to the person who is the subject of the order.

If a *justices examination order* is made by a justice of the peace, the justice must:
- send the order and a copy of the application to the administrator (usually the service closest to the person who is the subject of the order), and
- send a copy of the order to the registrar of the Magistrates Court stated in the order – usually the Magistrates Court nearest the person who is the subject of the order.

The *justices examination order* can be faxed to the authorised mental health service. If the information is faxed, the registrar or justice must send the original of the order and a copy of the application documents to the health service.

**3.3 Processes and authority for effecting a justices examination order (s30-31)**

On receiving the *justices examination order*, the administrator must make arrangements for the person named in the order to be examined by a doctor or authorised mental health practitioner.

Where a doctor or authorised mental health practitioner is the applicant for a *justices examination order*, the doctor or practitioner should not examine the patient to determine if the assessment documents can be made.
The *justices examination order* must state the period for which it is valid. This period is up to a maximum of seven (7) days, after which time the *justices examination order* will cease to have effect.

The *justices examination order* authorises the doctor or an authorised mental health practitioner to conduct an examination for the purpose of determining whether a *recommendation for assessment* should be made.

The doctor or authorised mental health practitioner may:
- if necessary, enter a place stated in the order, or another place it is reasonably believed the person may be found to conduct the examination
- exercise authority under the *justices examination order* with the help that is reasonable in the circumstances.

The doctor or authorised mental health practitioner must, to the extent that is reasonable and practicable, explain the nature and effect of the *justices examination order* to the person and produce the order for the person’s inspection.

If the doctor or authorised mental health practitioner is concerned about the examination environment being unsafe or assesses the environment as a risk to clinicians then one or more of the following steps, depending on the situation should be undertaken:
- escalate the matter to the administrator and Clinical Director;
- liaise with a Mental Health Act Liaison Officer;
- utilise police powers to detain the person at the place stated in the *justices examination order* until advice is sought; and/or
- consider whether the person could be transported under an *emergency examination order* if the police, ambulance or a psychiatrist believe the requirements are met.

**Police assistance (s30)**

If police assistance is required, a health practitioner or ambulance officer should complete the *request for police assistance* form and provide the form to the police.

If a health practitioner or ambulance officer asks police to provide assistance, a police officer must, as soon as reasonably practicable, ensure reasonable help is given. The police officer may ensure the person remains at the place for the examination to be carried out.
The request for police assistance form should be completed and a copy forwarded to the administrator for placement in the patient’s clinical record.

The request for police assistance form should be completed and a copy forwarded to the administrator for placement on the patient’s file.

The request for police assistance should be followed up with telephone call to the relevant police to confirm the form has been received and to establish arrangements for the police assistance.

### 3.4 Processes following examination

On making the examination, the doctor or authorised mental health practitioner must decide whether a recommendation for assessment can be completed.

**Where the examination results in a recommendation for assessment**

The justices examination order does not authorise taking the person to an authorised mental health service. If the doctor or authorised mental health practitioner makes a recommendation for assessment, a request for assessment must also be made to authorise the person’s transportation to the authorised mental health service for involuntary assessment (see section 2.3 of this chapter).

Any adult can make the request for assessment including, for example:

- the person who made the application for the justices examination order;
- an adult (for example, friend, family member) at the person’s home; or
- another health service employee, who accompanies the doctor or authorised mental health practitioner.

The administrator of the authorised mental health service must ensure the information system is updated to reflect the details of the order and the results of the examination.

**Where the examination does not result in a recommendation for assessment (s32)**

**Responsibilities of the doctor or authorised mental health practitioner**

If an examination is not carried out under the order, the doctor or authorised mental health practitioner must provide reasons why no examination has occurred on the back of the justices examination order.

If, after examination, the doctor or authorised mental health practitioner decides not to make a recommendation for assessment, this decision must be reviewed by a consultant psychiatrist prior to making a final
determination on the matter. This review may occur through telephone consultation with the on-call psychiatrist for the authorised mental health service.

Where the decision not to complete a recommendation for assessment is confirmed, the doctor or practitioner should document (at a minimum):

- the reasons the examination did not result in the making of assessment documents (i.e. with reference to the assessment criteria);
- details and outcomes of consultation with a consultant psychiatrist and any other senior staff;
- the management plan, in particular, referral or follow-up arrangements made for the person; and
- results of communication with the applicant where this communication is appropriate.

An entry in the patient’s clinical record documenting the outcome should also be made.

If the examination was not conducted, the doctor or practitioner should document appropriate details (for example, if the person could not be located, action taken to locate the person in the seven (7) day period).

The confidentiality provisions of the Hospital and Health Boards Act 2011 prohibit the sharing of information about the outcome of a justice examination order with the applicant. However, it might be appropriate to advise the applicant of whether the justice examination order was able to be actioned within the seven (7) day period.

Responsibilities of the administrator

Where a justices examination order does not result in assessment documents being made, the administrator must forward a copy of the justice examination order and application for a justice examination order to the Director of Mental Health (the Director).

The purpose of notification to the Director is to provide a layer of oversight where detention and examination under a justices examination order does not result in involuntary assessment. In order for the Director to be satisfied that the provisions have been appropriately applied, a full explanation of the results of the examination (detailed above) must be provided by the doctor or authorised mental health practitioner on the back of the form.
The administrator is responsible for ensuring that the doctor or health practitioner has addressed these issues before documentation is forwarded to the Director.

The administrator must ensure the information system is updated to reflect the details of the order and the results of the examination.

### 3.5 Actions where a justices examination order is false or misleading

If a person believes an offence has been committed in relation to an application for a justices examination order, a formal complaint may be made to the Queensland Police Service. The police have the authority to undertake an investigation to determine whether there are sufficient grounds for further action under section 193 of the Criminal Code.

The person may write to the Director asking for an investigation, if there is evidence that section 522 of the Act was breached in the making of the application for a justices examination order.

Whilst the person may pursue these two avenues of complaint, it is recommended that they initially lodge an application for the relevant information under the RTI Act, bearing in mind the advice under the previous Right to Information section.

If assessment documents are not made following a justices examination order a review may be undertaken by the Director’s office.

### 4. Emergency Examination Orders

Police officers, ambulance officers and psychiatrists are empowered to act in emergency circumstances to take a person to an authorised mental health service for examination. The purpose of the examination is to decide if assessment documents should be made for the person.

#### 4.1 Emergency examination order (police or ambulance) (s33-35)

A police or ambulance officer may take a person to an authorised mental health service for examination under an emergency examination order (police or ambulance). An authorised mental health service for the purpose of assessment in remote communities includes a health centre.

The police or ambulance officer must reasonably believe the following criteria apply:

- a person has a mental illness;
because of the person’s illness there is an imminent risk of significant physical harm being sustained by the person or someone else;

- applying for a justices examination order would cause dangerous delay and significantly increase the risk of harm to the person or someone else; and

- the person should be taken to an authorised mental health service for examination to decide whether a request and recommendation for assessment should be made for the person.

**Taking the person to the authorised mental health service and making an emergency examination order**

The police officer or ambulance officer must take the person to an authorised mental health service or a public hospital for examination.

Immediately after taking the person to the authorised mental health service, the police or ambulance officer must make the emergency examination order by completing Part 1 of the emergency examination order and state the time when it is made. The person may be detained in the authorised mental health service while the order is being made.

Immediately after making the emergency examination order, the police officer or ambulance officer must give the order to a health service employee at the authorised mental health service. The health service employee must register the exact time the order was made by the police or ambulance officer in Part 2 of the emergency examination order. The time recorded by the police or ambulance officer is the commencement of the period in which the person may be detained for examination by a doctor or authorised mental health practitioner (maximum of six hours).

If a health practitioner is not available, a health service employee who is not a health practitioner may accept the patient. After accepting the patient, the health service employee must immediately notify a health practitioner.

### 4.2 Emergency examination order (psychiatrist) (s37-39)

The criteria for an emergency examination order (psychiatrist) are the same as those for an emergency examination order (police or ambulance), except that the psychiatrist must be satisfied that the person has a mental illness. Police and ambulance officers must reasonably believe the person has a mental illness.

These provisions are intended for sole practitioner psychiatrists in private practice. Psychiatrists not working in these circumstances should initiate the involuntary assessment provisions by use of a recommendation for assessment and a request for assessment.
In exceptional circumstances, a psychiatrist may make an *emergency examination order* if satisfied that the person has a mental illness from reliable information provided by a health professional, without actually seeing the person. It is intended that an *emergency examination order* would only be made on this basis in extraordinary situations where there are no doctors or authorised mental health practitioners available, such as in rural and remote areas.

It is preferable that separate authorisations be provided for each stage within the involuntary process. That is, as far as possible, a psychiatrist who completes an *emergency examination order (psychiatrist)* should not complete the recommendation for assessment.

**Taking the person to the authorised mental health service**

An *emergency examination order (psychiatrist)* authorises the person to be taken to an authorised mental health service or a public hospital by a psychiatrist, a police officer or an ambulance officer.

The order must be produced to a health service employee. The health service employee must register the time they receive the order on the *emergency examination order (psychiatrist)*. Where the health service employee is not a health practitioner, the health service employee must immediately notify a health practitioner.

The period in which the person may be detained for examination by a doctor or authorised mental health practitioner (maximum of six hours) commences when the *emergency examination order (psychiatrist)* is provided to the health service employee.

### 4.3 Detention under *emergency examination order* (s36, 40)

The Act sets out requirements for the detention and examination of persons by a doctor or authorised mental health practitioner.

The *emergency examination order* provisions authorise the person’s detention for a maximum of six (6) hours:

- from the time entered by the police or ambulance officer (for an *emergency examination order (police or ambulance)*; or
- from the time entered by the health service employee (for an *emergency examination order (psychiatrist)*).

Examination by a doctor or authorised mental health practitioner should be made as early as possible within the six (6) hour examination period.
**Assistance from police and ambulance officers after detention period commences**

The health service assumes responsibility for the person’s detention once the order is provided to staff by police or ambulance personnel. Police or ambulance personnel may depart from the facility as soon as this occurs.

In circumstances where there is concern about the person’s management (for example, a person who is considered likely to abscond), health service staff may request that police/ambulance personnel remain with the person until alternative arrangements can be made (for example, until assistance from hospital security arrives or the person is taken to a more secure setting within the facility).

Section 516 of the Act provides that the administrator and anyone lawfully helping the administrator (for example, health service staff) may detain the person with the help, and using the minimum force that is necessary and reasonable in the circumstances.

Under these provisions, a health practitioner may request that the police or ambulance officer remain with the person.

A request for police/ambulance personnel to remain should only be made where the individual circumstances of a case dictate that the request is necessary and reasonable. It should not occur routinely. Where it is necessary to request that police/ambulance personnel remain, health service staff should ensure that the alternative arrangements are made as promptly as possible.

**Absconding during the detention/examination period**

The *emergency examination order* ceases if the patient absconds prior to arriving at the authorised mental health service or during the examination period.

Where the patient absconds and there is ongoing concern about the person’s mental state, an application for a *justice’s examination order* may be appropriate. In more urgent circumstances (i.e. where there is imminent risk) health service staff may notify police in accordance with section 147 of the *Hospital and Health Boards Act 2011* (disclosure to lessen or prevent serious risk to life, health or safety).

For further information, see the *Queensland Health Confidentiality Guidelines* at:

4.4 **Examination under emergency examination order (s36, 40)**

The purpose of an examination under an *emergency examination order* is to decide whether a *recommendation for assessment* can be made.

In carrying out the examination, the doctor or authorised mental health practitioner must, to the extent that it is reasonable and practicable in the circumstances, explain the *emergency examination order* to the person. This includes, for example, the purpose of the *emergency examination order* and what is authorised under the order.

Where the doctor or practitioner considers that the criteria for assessment are not met, the doctor or practitioner must discuss the assessment with a consultant psychiatrist prior to making a final determination on the matter. In rural or remote services where a consultant psychiatrist is not available, advice may be sought from a senior registrar in psychiatry or a senior medical officer who is an authorised doctor.

The examiner must record the time when the examination is completed in the Examiner’s details section in Part 3 of the *emergency examination order*. NOTE: this time cannot be earlier than the start time recorded on the *emergency examination order* by the police officer, ambulance officer or health service employee.

**Examination hampered by intoxication**

If immediate examination of the person is not possible due to intoxication, the person should be examined as soon as possible within the six (6) hour detention period. If an examination is not able to be conducted within the examination period, the reasons should be documented on the relevant section of the *emergency examination order* (see ‘Where the examination does not result in a recommendation for assessment’ below). If the person remains intoxicated while in the health service beyond the six (6) hour period, an examination may only be made with the person’s consent.

**Where the examination results in a recommendation for assessment**

In order to effect the involuntary assessment process, a *request for assessment* must also be made (refer to section 2.1 in this chapter). Any person can make the *request for assessment*, including for example:

- an adult relative who is available and willing to make the *request for assessment*; or
- another health service employee.

The administrator of the authorised mental health service must ensure the information system is updated to reflect the details of the order and the results of the examination.
Where the examination does not result in a recommendation for assessment (s41)

Responsibilities of the doctor or authorised mental health practitioner

If the doctor or authorised mental health practitioner determines that a recommendation for assessment should not be made, the doctor or practitioner must complete the relevant section in Part 3 of the emergency examination order. At a minimum, the doctor or practitioner should address:

- the reasons the examination did not result in the making of assessment documents (i.e. with reference to the assessment criteria);
- if the person could not be examined in the statutory timeframe or was examined outside this period, details of actions taken to examine the person (including times examination was attempted) and outcome;
- the management plan, in particular, referral or follow-up arrangements made for the person; and
- consultation undertaken with the consultant psychiatrist (or authorised doctor).

The doctor or practitioner should also document this information in the person’s clinical record.

Responsibilities of the administrator

The administrator must, as soon as reasonably practicable, arrange for the person to be returned to the place from which the person was taken or to another place that they reasonably ask to be taken.

The administrator must also forward a copy of the emergency examination order to the Director.

The purpose of notification to the Director is to provide a layer of oversight where detention and examination under an emergency examination order does not result in involuntary assessment. In order for the Director to be satisfied that the provisions have been appropriately applied, a full explanation of the results of the examination (detailed above) must be provided by the doctor or practitioner on the back of the form. The administrator is responsible for ensuring that the doctor or health
practitioner has addressed these issues before documentation is forwarded to the Director.

The administrator must ensure the information system is updated to reflect the details of the order and the results of the examination.

5. Flowchart

The following flowchart illustrates the steps in the assessment process.
Steps in the Assessment Process

**Assessment Criteria (s13)**

All of the following must be met for a person based on the available information:

- the person appears to have a mental illness;
- the person requires immediate assessment;
- the assessment can properly be made at an authorised mental health service;
- there is a risk that the person may:
  - cause harm to himself or herself or someone else;
  - suffer serious mental or physical deterioration;
- there is no less restrictive way of ensuring the person is assessed; and
- the person
  - is lacking the capacity to consent to be assessed; or
  - has unreasonably refused to be assessed.

**Urgent circumstances**

**Emergency Examination Order (EEO)**

Strict criteria must be met. Can be made by:

- police officer or ambulance officer (s33) or
- psychiatrist (s37)

**Non-urgent circumstances**

**Justices Examination Order (JEO) (s27 - 32)**

If assessment documents cannot be made:

- JEO can be made by a JP (qualified or Magistrates Court) or magistrate who must reasonably believe:
  - the person has a mental illness and
  - the person should be examined to determine whether a recommendation for assessment should be made and
  - the examination cannot be carried out unless the order is made
- valid for up to 7 days and forwarded directly to AMHS.

**Examination of person (s30)**

- by doctor or authorised mental health practitioner
- to determine if a recommendation for assessment should be made
- police assistance may be provided to ensure examination occurs

**Person taken to AMHS (s34 or s39)**

Depending on who makes EEO the psychiatrist, police officer or ambulance officer may take the person for examination to decide whether assessment documents should be made.

**Examination at AMHS (s36 or s40)**

- the person can be detained for up to 6 hours
- examination by a doctor or AMHP to decide if the assessment documents should be made.
- if documents are not made, person must be taken back to the place they were taken from, or another place the person reasonably asks to be taken (s41).

**Assessment process starts (s44-48)**

- to decide if person needs involuntary treatment
- becomes an involuntary patient
- may be assessed without their consent
- may be detained for up to 24 hours and then extended by authorised doctor (max 72 hours)

**Have assessment documents been made for the person? (s16)**

- Yes
- No

**Have assessment documents been made for the person? (s16)**

- Yes
- No

**Assessment can only carried out with the person’s consent**

- Yes
- No

**Person taken to AMHS (s25)**

by health practitioner or ambulance officer. If requested reasonable police assistance must be provided as soon as reasonably practicable