CHAPTER 11 - PATIENT RIGHTS

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1. **Introduction**

The *Mental Health Act 2000* (the Act) safeguards patient rights in a number of ways. The Act’s principles and notification requirements ensure that, as far as possible, patients are informed about relevant matters and given appropriate opportunity to participate in decisions about their treatment or care.

Other important safeguards contained in the Act include:

- review of involuntary status by an independent body - the Mental Health Review Tribunal (the Tribunal);
- the appointment of an allied person to assist the patient to put forward their views and wishes; and
- requirements to provide involuntary patients with a statement about their rights under the Act.

The provisions of the Act summarised below can be read in full in the Mental Health Act 2000, chapter 6 (Mental Health Review Tribunal reviews) and chapter 9 (Allied persons and rights of involuntary patients).

1.1 **Director of Mental Health resources**

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

- *Fact sheet 6 – Mental Health Review Tribunal*
- *Fact sheet 7 – Patient rights*
- *Brochure - Your rights as an involuntary patient*
- *Brochures - Allied persons:*
  o *Your right to choose an allied person*
  o *Becoming an allied person*

1.2 **Other resources of relevance to this chapter**

Other resources of relevance to this chapter include:

- *Queensland Health Guide to Informed Decision making in Healthcare*
2. General rights and protections under the Act

2.1 Principles (s8, 9)

The Act’s principles embody a range of patient rights (see chapter 1 of the Resource Guide). The principles are intended to underpin any decisions made or actions carried out under the Act.

In particular, the principles require that:

♦ the patient’s rights and liberties are only affected to the extent necessary to ensure the patient’s health and safety, or the safety of others;
♦ the patient is treated with dignity and respect at all times;
♦ the patient is encouraged and supported to participate in decisions about their treatment or care;
♦ the patient’s religion and cultural background is respected and taken into account; and
♦ the patient’s personal information is treated confidentially.

2.2 Provision of information to facilitate patient involvement in decisions

To facilitate patient participation in decisions and enable patients to exercise their rights, the Act contains a number of specific provisions requiring information to be given to the patient. Information must, as far as practicable, be given at key points in the involuntary process. This includes, for example, informing the patient:

♦ that assessment documents are in force and what this means;
♦ that an involuntary treatment order has been made, the category of the order and the basis for the order;
♦ when changes are made to the order (for example, a change to the category of the order) and the reasons for the change; and
♦ about the patient’s treatment plan and any changes to the treatment plan.

Under section 541A of the Act, the authorised doctor must tell or explain something to a patient:

♦ in a way that the patient is most likely to understand; and
♦ in a way that has appropriate regard to the patient’s age, culture, mental illness, communication ability and any disability.
If the authorised doctor believes that the patient has not understood what they were told or explained, they must record details of the fact in the patient’s file.

2.3 Access to health practitioner and legal adviser (s347)

The Act makes provision for an involuntary patient to access a health practitioner (i.e. other than a health practitioner at the authorised mental health service) or a legal advisor while at an authorised mental health service.

A health practitioner may, at any reasonable time of the day or night:
- visit and examine an involuntary patient in an authorised mental health service; and
- consult with an authorised doctor for the health service about the patient’s treatment or care.

A legal advisor may visit an involuntary patient at the authorised mental health service at any reasonable time of the day or night.

A visit by a health practitioner or legal adviser must be at the patient’s request (or a request made on the patient’s behalf) and arrangements are made through the administrator.

3. Independent review of involuntary processes

The Tribunal provides a key statutory safeguard by providing independent review of involuntary treatment (see chapter 2 of the Resource Guide for information about the establishment of the Tribunal.)

In particular, the Tribunal’s jurisdiction includes:
- review of involuntary treatment order patients (see chapter 4 of the Resource Guide);
- review of forensic patients (see chapter 7 of the Resource Guide);
- review of the detention of young people in a high security unit;
- determining treatment applications (see chapter 12 of the Resource Guide);
- determining applications for patients to move out of Queensland (see chapter 7 of the Resource Guide);
- determining applications for forensic information orders (see chapter 13 of the Resource Guide);
- determining appeals against a decision of the administrator to not allow a person to visit an involuntary patient; and
deciding applications by the Director of Mental Health (the Director) or Director Forensic Disability for transfer between authorised mental health services and between authorised mental health services and the forensic disability service, where agreement cannot be reached.

The Tribunal's hearing procedures also aim to safeguard patient rights and facilitate patient participation. In conducting a hearing, the Tribunal must:

- observe the principles of natural justice; and
- conduct the hearing with as little formality as is necessary for fair and proper consideration of the issues.

While the Act aims to ensure that patients receive all information relevant to the Tribunal's decision, the Tribunal may make a confidentiality order in limited circumstances. A confidentiality order may be made if the Tribunal is satisfied that disclosure of information would cause serious harm to the health of the patient or put the safety of the patient or another person at risk.

A confidentiality order can be made in relation to:

- information given before the Tribunal;
- matters contained in documents filed with or received by the Tribunal;
- the reasons for the Tribunal's decisions on a proceeding; and
- the reasons for taking into account or not taking into account material submitted by a victim or concerned person.

Confidentiality orders may also be made in relation to forensic information orders (see chapter 13 of the Resource Guide).

If the Tribunal makes a confidentiality order, the information must be provided to the person's lawyer or agent. If the person is not represented by a lawyer or agent, the Tribunal must ensure a lawyer or agent is appointed for the patient.

4. Allied persons (s339-343)

The allied person's provisions provide an important mechanism for promoting and safeguarding patient rights under the Act and facilitating patients' involvement in their treatment and care.

All involuntary patients have the right to have an allied person to help them represent their views, wishes and interests regarding their assessment, detention, treatment or care under the Act. In particular, the role of the allied person is to assist the patient in understanding their rights as an involuntary patient and communicating their views to the treating team and
the Tribunal. The role is an informal one and the allied person does not have any decision making power regarding the patient’s treatment and care.

The patient may choose any adult (i.e. 18 years or over) who is willing, able and readily available to carry out the role. However, a health service employee at the treating service cannot be an allied person for the patient.

The allied person should be:

- someone the patient trusts; and
- able to listen to the patient and help them say what they want and not what the allied person believes to be in the best interests of the patient.

The patient may only nominate one allied person at any one time. However, this does not preclude the patient utilising other support persons or consenting to information being provided to such persons.

The patient may also choose not to have an allied person.

At any time, the patient may change their allied person, choose to have an allied person if they have previously said they did not want one, or decide they no longer wish to have an allied person.

If the patient is assessed as not having the capacity to make a decision about choosing an allied person, the administrator is required to nominate an allied person for the patient (section 342 and section 4.1 of this chapter).

Administrators and clinicians have a fundamental responsibility to ensure that involuntary patients are informed of their right to choose an allied person and supported in exercising this right as soon as practicable, on becoming an involuntary patient (i.e. from the assessment period onwards).

Further information and support in exercising this right should also be offered when there is any change to the patient’s involuntary category, acknowledging that the patient’s decision about choosing an allied person may change throughout the time that they are an involuntary patient.

The patient needs to be provided with an explanation:

- in a language or way the person is most likely to understand; and
- in a way that is considerate of the person’s age, culture, communication ability, mental illness and any disability.
This explanation should be provided verbally and in writing. Several publications are available to assist this process, including:

- *Your rights as an involuntary patient* (the statement of rights);
- *Your right to choose an allied person* brochure for patients; and
- *Becoming an allied person* brochure for allied persons.

These brochures are available in a range of languages and in versions specifically for Aboriginal and Torres Strait Islander peoples. In addition, simplified English versions are available for people with low literacy levels.

Access to an interpreter through the Queensland Health Interpreter Service should be considered for people from non-English speaking backgrounds.

### 4.1 Nomination of an allied person

**The patient's capacity to make decisions about choosing an allied person**

In line with the Act’s principles, a patient is presumed to have capacity to make decisions about choosing an allied person.

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 Act defines capacity as meaning the person is capable of:

- understanding the nature and effect of decisions about choosing an allied person;
- freely and voluntarily making decisions about choosing an allied person; and
- communicating the decision in some way.

Given the significance of the role of the allied person in supporting the rights of involuntary patients, a low threshold should be applied to assessing a patient’s capacity to make decisions about choosing an allied person.

It must be noted that capacity to make a decision is influenced by and fluctuates with the person’s mental state, significant physical health conditions and medication side-effects. It is therefore imperative that capacity is regularly assessed by a psychiatrist, with documentation of the assessment process and overall clinical impression.
If the patient’s mental state is such that they are unable to nominate an allied person, the treating team is responsible for ensuring that the patient is given further opportunities to make this nomination. An entry in the clinical record documenting each outcome should be made by the treating team.

Refer to the following document for further information:

Queensland Health Guide to Informed Decision-making in Healthcare at:

**Allied person chosen by the patient**

While the patient has the right to choose any adult to be their allied person, the clinical team should offer support and assistance to the patient in making this decision. A health practitioner may explain that an allied person can be a partner, family member, carer, friend, community support worker, legal advisor or a health practitioner not employed by the treating health service. A discussion and information about potential strengths, barriers and issues in undertaking the allied person role may help the patient choose an allied person who can clearly advocate for their views and wishes.

Consideration should be given to issues which might adversely affect the person’s ability to fulfil the role of allied person, for example:

- cultural issues;
- their own personal or health matters; and
- risk or safety issues (such as domestic violence or child protection matters).

These matters should be explored with the patient in the context of the therapeutic relationship.

If the patient indicates their wish to have an allied person, but is unable to identify someone to fulfil this role, the treating team may offer assistance in considering options and making suggestions about a possible nomination.

If the patient has transferred to the authorised mental health service from the forensic disability service, the allied person nominated under the Forensic Disability Act 2011 is the allied person. However, it must be recognised that the patient may change their allied person at any time.

The Allied person nomination or change form is used to notify the administrator of the patient’s decision regarding their allied person. This
form must be forwarded to the administrator and a copy placed in the patient’s clinical file.

**Patient chooses not to have an allied person**

Providing they have capacity to make a decision about choosing an allied person, a patient can choose not to have an allied person, even if they have previously nominated an allied person. The clinical team is responsible for recording the patient’s decision in the clinical file and completing the *allied person nomination or change* form, which must be completed for all patients regardless of whether or not they choose to nominate an allied person. This form should be forwarded to the administrator and a copy placed in the patient’s clinical file.

**Allied person chosen by the administrator**

The administrator’s decision to choose an allied person for the patient should not be based on an assessment of the ‘suitability’ of a person chosen by the patient. If the patient has capacity to make the decision and the person nominated is an adult who is willing, able and readily available, the person nominated by the patient is the allied person. This decision cannot be overturned by the administrator.

If the administrator believes the patient does not have capacity to choose their allied person, the following process applies:

- if the patient has nominated an allied person by way of an advance health directive, the person nominated in the directive is the allied person;
- if the patient does not have an advance health directive or has not nominated an allied person in the directive, the administrator must choose the allied person for the patient. The administrator must choose the first person in the following list who is willing, capable, readily available and culturally appropriate:
  - if the patient is a minor – a parent of the minor or the minor’s guardian;
  - if the patient has a personal guardian – the guardian;
  - if the patient has a personal attorney – the attorney;
  - an adult relative or adult close friend of the patient;
  - an adult carer of the patient; or
  - another adult.
- If the administrator is unable to identify a person who is willing, capable, readily available and culturally appropriate, the allied person is the Public Guardian.
4.2 Appointment of an allied person

An allied person nomination by the patient or administrator is effective immediately from the time the decision is made.

As soon as practicable after the nomination is made, the administrator or a member of the clinical team should make reasonable efforts to contact the nominated person by telephone or in person to explain the role of allied person and ascertain if the person is willing to accept the nomination. If the nominated person accepts the appointment, they should be advised that they will receive formal notification in writing with written information about the role and a copy of the statement of rights for involuntary patients. The outcome of this contact should be recorded in the patient’s clinical file.

The administrator is responsible for ensuring that the person nominated as the allied person is informed in writing of the nomination, and is given information about the role of the allied person and an opportunity to accept or decline the nomination. This task and other administrator responsibilities set out in this policy are often performed by the administrator delegate.

The letter template Nomination as an allied person sent with the following enclosures is available for this purpose:

- Becoming an allied person;
- Your rights as an involuntary patient; and
- Allied person acceptance form.

If the Public Guardian is the patient’s allied person, notification is provided by way of the Nomination as allied person – Public Guardian form with the following enclosures:

- Becoming an allied person;
- Your rights as an involuntary patient; and
- Allied person acceptance form;

The person accepts the role of allied person

If the person accepts the nomination in writing, the Allied person acceptance form should be retained by the administrator and a copy placed in the patient’s clinical file. The clinical team should inform the patient that the person has accepted their nomination to be their allied person.
If confirmation of the nominated person’s acceptance is not obtained verbally or in writing within a period of two weeks from the time the letter advising them of their nomination was sent, it should be assumed that the nomination has been accepted. The administrator or clinical team may wish to consider, on a case by case basis, whether any further action should be undertaken to obtain confirmation of the allied person nomination.

**The person declines the role of allied person**

If the person declines the nomination either verbally or in writing, the health practitioner should complete the Allied Person Nomination or Change form and forward it with any correspondence from the person to the administrator. A copy should be placed in the patient’s clinical file.

The clinical team should inform the patient of the outcome and engage with them about nominating another person to be their allied person.

### 4.3 Information given to the allied person

In order to enable the allied person to assist the patient, the allied person is:

- notified of the patient’s involuntary admission and provided with the Statement of rights;
- notified if an involuntary treatment order, forensic order or disability forensic order is made for the patient;
- notified if a change is made to the category of an involuntary treatment order (i.e. community or inpatient);
- notified of reviews (for example, review of an involuntary treatment order or forensic order) and treatment applications (i.e. non-consensual electroconvulsive therapy) by the Tribunal;
- able to attend hearings of the Tribunal and to help the involuntary patient represent their views, wishes and interests;
- able to apply to the Tribunal for a review on behalf of the patient;
- given a copy of the Tribunal’s decision on a review or treatment application;
- notified of decisions regarding an information order for a classified or forensic patient if the patient is advised of the decision; and
- notified that an involuntary treatment order, forensic order or disability forensic order has been revoked.

The patient may provide consent for any or all of this information to be provided to other nominated persons.
4.4 Reviewing the allied person appointment

Review of administrator appointment

The administrator’s appointment of an allied person should only remain in place until the patient is capable of choosing their own allied person. The patient’s capacity to choose an allied person should be regularly reviewed by the clinical team and the administrator should be advised as soon as possible when the patient has capacity. The patient should be supported in making a decision about their allied person at the earliest possible opportunity.

If the Public Guardian is appointed as the allied person, the administrator is responsible for providing notification when the patient becomes capable of making a decision about their allied person (i.e. to advise that the Public Guardian’s role as allied person has ceased). An Appointment of allied person ceased letter should be used for this purpose.

If the administrator has nominated an allied person for the patient, the administrator can revoke the appointment if the administrator is no longer satisfied the person is willing, readily available, capable and culturally appropriate to be the patient's allied person. An Appointment of allied person ceased letter may be used for this purpose.

Review of patient appointment

Given that the patient’s mental condition and personal situation may change through their status as an involuntary patient, the treating team should ensure that a process is in place to regularly review the appointment of the allied person with the patient (recognising the patient’s right to choose any adult to be their allied person). This process should be conducted in the context of the therapeutic relationship. The preparation of a report for the Tribunal hearing could provide an opportunity for this review to take place.

The clinical team should also review the appointment of the allied person with the patient if there is a change in the patient’s circumstances which might impact on their choice of allied person.

At any time the allied person may decide not to continue their appointment as allied person for the patient. As soon as practicable on becoming aware that the person is no longer the allied person for the patient, the treating team should engage with the patient about choosing another person to be their allied person.

The administrator should be informed that the allied person appointment has ended and an entry should be made in the patient’s clinical file.
4.5 Change of the allied person

The administrator should be notified of a change of allied person for the patient by way of the Allied person nomination or change form. A copy of this form should be placed in the patient’s clinical file.

The administrator is responsible for writing to the former allied person advising them that their appointment as allied person for the patient has ceased. The Appointment of allied person ceased template letter can be used for this purpose.

The administrator is responsible for writing to the new allied person to inform them that they have been nominated as allied person for the patient according to the process outlined above.

The administrator must ensure the details of the patient’s allied person are up to date on the information system.

4.6 When the allied person appointment ends

The allied person appointment ends when:

- the patient is no longer an involuntary patient;
- the patient chooses another person to be their allied person;
- the patient tells the treating team or administrator that they no longer wish to have an allied person, and the administrator is satisfied that the person has the capacity to make this decision;
- if the allied person informs the treating team or administrator that they no longer wish to be the patient’s allied person; and
- if the administrator chose the allied person and the administrator is no longer satisfied that the person is willing, readily available, capable and culturally appropriate to be the patient’s allied person.

The administrator is responsible for informing the allied person that their appointment as allied person for the patient has ended. The Appointment of allied person ceased letter can be used for this purpose.

The administrator must ensure the details of the patient’s allied person are up to date on the information system.

5. Statement of rights (s344-346)

As required under the Act, the Director has issued a written Statement of rights of involuntary patients (statement of rights), titled ‘Your rights as an involuntary patient’.
The statement of rights is available in a range of versions:

- English;
- simplified English for people with low literacy;
- 15 languages other than English; and
- a version specifically for Aboriginal and Torres Strait Islander peoples.

The statement of rights includes information about:

- the rights of patients and allied persons under the Act; and
- the rights of patients to make complaints about the service provided at an authorised mental health service and how complaints can be made.

5.1 Written and verbal explanation to be given

The Statement of rights must be provided to a person when they become an involuntary patient at an authorised mental health service. The patient’s allied person must also be provided with a copy.

The administrator must ensure that the patient is provided with a verbal explanation of the information contained in the Statement of rights. This explanation must be given to the patient:

- in the language or in the way that the person is most likely to understand; and
- in a way that takes account of the patient’s age, culture, mental illness, communication ability and any disability.

If the person giving the explanation believes that the patient has not understood the information, that person must record this in the patient’s clinical file and ensure that the patient is informed when able to understand.

5.2 Notice of rights

The administrator must ensure that the information contained in the Statement of rights is prominently displayed in the health service.

The poster ‘Your rights as an involuntary patient’ is available for this purpose. A version of this poster has been produced specifically for Aboriginal and Torres Strait Islander peoples.