

Objects and Principles

The objects and principles of the *Mental Health Act 2016* play a critical role in determining how the Act is interpreted and administered.

What are objects and principles?

The objects outline the underlying purposes of the Act.

The principles guide the administration of the Act. The Act requires anyone who performs a function or exercises a power under the Act to have regard to the principles. This includes authorised doctors, authorised mental health practitioners, administrators of authorised mental health services and the Mental Health Review Tribunal. Both the objects and the principles can be used to assist in the interpretation of the Act.

What are the objects of the Act?

The Mental Health Act 2016 has three main objects:

- to improve and maintain the health and wellbeing of persons who have a mental illness who do not have the capacity to consent to be treated
- to enable persons to be diverted from the criminal justice system if found to have been of unsound mind at the time of committing an unlawful act or to be unfit for trial, and
- to protect the community if persons diverted from the criminal justice system may be at risk of harming others.

The first object is dealt with in the Act through provisions related to examinations, assessments and treatment authorities.

The second object relates to circumstances where a person comes into contact with the criminal justice system. This applies to persons with a mental illness, intellectual disability or other mental condition.

The third object relates to the limited circumstances where risks to the community need to be managed for a person who comes into contact with the criminal justice system.

The Act states the main objects are to be achieved in a way that:

- safeguards the rights of persons,
- is the least restrictive of the rights and liberties of a person who has a mental illness, and
- promotes the recovery of a person who has a mental illness, and the person's ability to live in the community, without the need for involuntary treatment and care.

Being least restrictive of the rights and liberties of a person means restricting the rights and liberties only to the extent that is required to protect the person's safety and welfare or the safety of others.

This means that actions taken under the Act that restrict a person's rights and liberties, for example under a treatment authority or forensic order, should only be the minimum necessary in the circumstances.

What are the principles of the Act?

The Mental Health Act 2016 is built around two sets of principles - one set apply to persons who have, or may have, a mental illness and the other apply to victims of an unlawful act.

The principles for victims of an unlawful act are outlined in the *Fact Sheet: Support for Victims*.

What principles apply to persons with a mental illness?

The following principles apply to the administration of this Act in relation to a person who has, or may have, a mental illness:

- The same basic human rights must be recognised and taken into account, including the right to respect and dignity as an individual.
- A person is presumed to have capacity to make decisions about their life, treatment and care, and to the greatest extent practicable, is to be

encouraged to take part in decisions and to have their views, wishes and preferences taken into account.

- Family, carers and other support persons are to be involved in decisions about a person's treatment and care to the greatest extent practicable, subject to the person's right to privacy.
- A person is to be provided with the necessary support and information to enable them to exercise their rights under the Act.
- A person is to be helped to achieve their maximum physical, social, psychological and emotional potential, quality of life and self-reliance.
- A person's age-related, gender-related, religious, communication and other special needs (including a hearing, visual or speech impairment) must be recognised and taken into account.
- The unique cultural, communication and other needs of Aboriginal people and Torres Strait Islanders must be recognised and taken into account. This includes providing culturally appropriate treatment and care and assistance from interpreters.

- A minor receiving treatment and care must have their best interests recognised, protected and promoted, for example, by receiving treatment and care separately from adults.
- The importance of a person's continued participation in community life and the maintenance of existing supportive relationships must be taken into account, for example, by providing treatment in the community in which the person lives.
- The importance of recovery-oriented services and the reduction of stigma associated with mental illness must be recognised and taken into account.
- Treatment and care to a person with a mental illness must be appropriate to promote and maintain the person's health and wellbeing.

A person's right to privacy and confidentiality must be recognised and taken into account.