Powers and Responsibilities of Police Officers

1. Introduction

The Mental Health Act 2016 commenced on 5 March 2017. This Act includes amendments to the Public Health Act 2005.

Police officers have powers and responsibilities under the Mental Health Act 2016 in relation to examination authorities, and to transport involuntary patients.

Police officers have powers and responsibilities under the Public Health Act 2005 in relation to emergency examination authorities.

2. Mental Health Act 2016

2.1 Examination authorities

Examination authorities are made by the Mental Health Review Tribunal on application by an administrator of an authorised mental health service, a delegate for the administrator, or another person who has received advice about ‘clinical matters’ (as defined in the Act) regarding the person who is the subject of the application.

Examination authorities authorise a doctor or authorised mental health practitioner (a position under the Mental Health Act 2016) to involuntarily examine a person. An examination authority is seen as a last resort if it is not possible for the person to be examined voluntarily.

An examination may result in a recommendation for assessment being made for the person which authorises an involuntary assessment to decide whether a treatment authority should be made for the person. A treatment authority authorises treatment of the person, and if necessary detention in an authorised mental health service, without the person’s consent.

The Act outlines the powers and responsibilities that may be exercised under an examination authority (see sections 32 to 35). A doctor or authorised mental health practitioner may exercise these powers. In performing these functions, the doctor or authorised mental health practitioner is a ‘public official’ for the purposes of the Police Powers and Responsibilities Act 2000. This means that a police officer may be asked to assist the doctor or health practitioner in the exercise of these powers. Where this occurs, the police officer has the same powers as the public official.

A doctor, authorised mental health practitioner or police officer may:

- enter a place stated in the authority, or another place, to find the person
- examine the person, without the person’s consent, at:
  - the place at which the person is found, or
  - if the doctor or authorised mental health practitioner considers it clinically appropriate at an authorised mental health service or public sector health service facility, and
- detain the person at the place at which the person is examined.

A person may be detained at an authorised mental health service or public sector health service facility for up to 6 hours, which may be extended to 12 hours; or at another place for up to 1 hour.

If the examination is to take place at an authorised mental health service or public sector health service facility, an authorised person (including a police officer) may transport the person to the service or facility for the examination (see transport powers below).
A doctor, authorised mental health practitioner or police officer may exercise these powers with the help and using the force that is necessary and reasonable in the circumstances.

Before exercising these powers, a doctor, authorised mental health practitioner or police officer must, or make a reasonable attempt to:

- identify himself or herself to the person
- tell the person an examination authority has been made
- explain to the person, in general terms, the nature and effect of the authority
- give the person a copy of the authority, if requested, and
- if the doctor, health practitioner or police officer is entering a place - give the person an opportunity to allow entry to the place without using force.

However, the doctor, practitioner or police officer need not comply with this if it may affect the actioning of the authority.

2.2 Power to transport involuntary patients

2.2.1 Authorised persons

‘Authorised persons’ have powers under the Mental Health Act 2016 to transport involuntary patients.

Authorised persons under the Act are (see section 359):

- an administrator of an authorised mental health service
- an ambulance officer
- a health practitioner
- a police officer
- a corrective services officer for the purpose of taking a person to or from a corrective services facility or court
- a youth detention employee for the purpose of taking a person to or from a youth detention centre or court, or
- a health service employee appointed by an administrator of an authorised mental health service.

The Act states specific circumstances where an authorised person may transport an involuntary patient (see Attachment A).

In addition to these specific authorities, the Act provides a general power for an authorised person to transport an involuntary patient or classified patient (voluntary) to or from an authorised mental health service, public sector health service facility, place of custody, court or a place in the community for the purposes of this Act (see section 361).

2.2.2 Transport of absent persons (‘patients required to return’)

The Act specifically deals with the transport of ‘absent persons’ (see Chapter 11, Part 6, Division 3).

A list of ‘absent persons’ is provided at Attachment B. For these persons, an administrator of an authorised mental health service, an authorised doctor, authorised mental health practitioner, or person in charge of a public sector health service facility may:

- authorise an authorised person, other than a police officer, to return the person, or
- request a police officer to return the person.

The authorisation or request must:

- be in the approved form
- state the name of the person to be transported
- state the name of the authorised mental health service or public sector health service facility to which the person is to be transported
- identify the risk the person presents to himself or herself, the authorised person or police officer, and others, and
- for a request to a police officer - state the reasons why it is necessary for a police officer to transport the person.
Where an authorised person, other than a police officer, is authorised to return the person, the authorised person may in turn request a police officer to assist in returning the person.

In some cases, a request or authorisation is only in force for 3 days. This applies where:

- the person is under a recommendation for assessment or is being detained for assessment
- the person is under an examination authority, or
- where a person is detained while a recommendation for assessment is being made for the person (see section 36).

Before issuing an authorisation or request, the administrator, authorised doctor, authorised mental health practitioner or person in charge of a public sector health service facility must make reasonable efforts to contact the person and encourage the person to come to the service or facility. However, this does not apply if it may risk the person harming himself, herself or others.

The authorisation or request gives the authorised person the power to detain and transport the person to the facility or service.

Before transporting the person, the authorised person must:

- tell the person that the authorised person is detaining the person and transporting the person to the authorised mental health service or public sector health service facility stated in the authorisation, and
- explain to the person the effect of taking this action for the person.

The officer must take reasonable steps to ensure the person understands this information including by having regard to the person’s culture, mental impairment and communication ability (see section 286).

Provisions of the Act apply if the administrator of an authorised mental health service is in possession of a photograph of a person who:

- is an involuntary patient or a classified patient (voluntary); and
- has become a patient required to return.

The administrator may disclose the photograph to the commissioner of the police service, or another person performing a function in an official capacity, such as a police officer, to help locate the person (see section 786).

### 2.2.3 Apprehension of persons absent from an interstate mental health service (section 366)

The Act empowers a police officer in Queensland to apprehend a person who is absent without permission from an interstate mental health service for whom a warrant for the person’s apprehension has been issued under a corresponding law of the other State.

A warrant issued under a corresponding law that authorises a person’s apprehension is taken to be a warrant for apprehension of the person under this Act by a police officer.

If the person is apprehended by a police officer, the officer may transport the person to an interstate mental health service or an authorised mental health service.

### 2.2.3 Interstate transfers – emergency examinations and recommendations for assessment (sections 369 and 371)

Provisions of the Act enable persons to be transported into and out of Queensland for an emergency examination or assessment, for example, over the Queensland-NSW border.

Provisions of the Act apply to a person in Queensland who:

- appears to have a mental illness and may be detained and transported to a public sector health service facility under the Public Health Act 2005 (emergency examination authority provisions), or
- is subject to a recommendation for assessment.

If permitted under a corresponding law in another State, the person may be transported to an interstate mental health service by an authorised person, including a police officer, or a person who is authorised to transport the person under the other State’s law.
Provisions of the Act also apply to a person outside of Queensland who may be transported to an interstate mental health service under a corresponding law in another State for:

- emergency involuntary examination or treatment and care relating to a mental illness, or
- an involuntary assessment of whether the person should be involuntarily treated for a mental illness.

In these circumstances, the person may be transported to a public sector health service facility for emergency examination, treatment and care. However, as with the emergency examination authority provisions under the Public Health Act 2005, if the public sector health service facility is not an inpatient hospital, the person may be transported to the facility only with the approval of the person in charge of the facility.

The person may be transported by an authorised person, including a police officer, or a person who is authorised to transport the person to an interstate mental health service under the other State’s law.

Where a person is transported by a police officer to a public sector health service facility for an emergency examination, an emergency examination authority must be made for the person, which is taken to have been made under the Public Health Act 2005.

2.3 Transport powers (sections 372 to 376)

Where an authorised person, including a police officer, has the power to transport a person, the power includes the power to detain the person for the purpose of the transport.

An authorised person, including a police officer, may transport and detain the person with the help and using the force that is necessary and reasonable in the circumstances.

For the purpose of transporting a person, the Act includes the power to administer medication, without consent, if a doctor is satisfied there is no other reasonably practicable way to protect the person or others from physical harm. The administration of the medication may be done by a doctor, or a registered nurse under the instructions of a doctor, with the help and using the force that is necessary and reasonable in the circumstances.

The Chief Psychiatrist may also approve the use of mechanical restraint to transport an involuntary patient if satisfied there is no other reasonably practicable way to protect the person or others from physical harm. This does not limit the powers a police officer has under the Police Powers and Responsibilities Act 2000.

The power of an authorised person to transport a person includes the power to enter a place in which the authorised person reasonably believes the person is located if:

- an occupier of the place consents to the entry, or
- it is a public place and the entry is made when the place is open to the public.

See also the Police Powers and Responsibilities Act 2000, section 21.

2.4 Warrants (Chapter 11, Part 6, Division 6)

Provisions of the Act apply if an authorised person considers a warrant for the apprehension of a person is necessary to transport the person under the Act to an authorised mental health service or public sector health service facility for examination, assessment, or treatment and care.

Where this applies, an authorised person may apply to a magistrate for a warrant. There are additional requirements for electronic applications.

The warrant authorises an authorised person, including a police officer, to:

- to enter a place the authorised person reasonably believes the person is located
- to search the place to find the person
- to remain in the place for as long as the authorised person considers it reasonably necessary to find the person, and
- to transport the person to a stated authorised mental health service or public sector health service facility.

The powers may be exercised with the help and using the force that is necessary and reasonable in the circumstances.
If an authorised person is intending to enter a place under a warrant, before entering the place, the authorised person must do or make a reasonable attempt to do the following things, unless immediate entry to the place is required:

- identify himself or herself to a person present at the place who is an occupier of the place
- give the person a copy of the warrant or, if the entry is authorised by a duplicate warrant under section 378, a copy of the duplicate warrant
- tell the person the authorised person is permitted by the warrant to enter and search the place to find the person named in the warrant, and
- give the person an opportunity to allow the authorised person immediate entry to the place without using force.

3. Public Health Act 2005 (Chapter 4A)

3.1 Emergency examination authorities

The emergency examination authority provisions of the Public Health Act 2005 apply if a police officer or ambulance officer reasonably believes that:

- a person’s behaviour indicates the person is at immediate risk of serious harm, for example, by threatening to commit suicide, and
- the risk appears to be the result of major disturbance in the person’s mental capacity caused by illness, disability, injury, intoxication or other reason, and
- the person appears to require urgent examination, treatment or care.

A police officer is not required to decide whether the person’s behaviour is caused by illness, disability, injury, intoxication or other reason.

Where this occurs, the officer may detain and transport the person to a ‘treatment and care place’.

A ‘treatment and care place’ means a public sector health service facility or another place, other than a watch house, where the person may receive appropriate treatment and care. Another place may be the person’s home.

If the treatment and care place is a public sector health service facility that is not an inpatient hospital, the transport of the person to the facility requires the approval of the person in charge of the facility. This is to ensure that appropriate treatment can be provided to the person.

When exercising these powers, a police officer or ambulance officer must explain to the person that the person is being detained and transported to a treatment and care place. The officer must take reasonable steps to ensure the person understands this information including by having regard to the person’s culture, mental impairment and communication ability.

These provisions may need to be used in conjunction with the powers under section 609(1)(a)(i) of the Police Powers and Responsibilities Act 2000, under which a police officer may enter a place if the officer reasonably suspects there is an imminent risk of injury to a person at the place. The Public Health Act 2005 provides that a police officer may consider advice from a health practitioner in forming a view about whether there is an imminent risk of injury to a person. This could occur, for example, if an acutely unwell patient left a hospital and was at risk of self-harm.

When a person is transported to a public sector health service facility, the police officer or ambulance officer must immediately make an emergency examination authority for the person in the approved form.

The police officer or ambulance officer must give the completed emergency examination authority to a health service employee at the facility.

The person may be detained at the facility while the emergency examination authority is being made.

A person who is subject to an emergency examination authority may be detained for up to 6 hours at the facility to be examined to decide the person’s treatment and care needs. This may be extended to up to 12 hours. As a result of an examination, a recommendation for assessment may be made under the Mental Health Act 2016.
3.2 Absconding persons

Where a person absconds from a public sector health service facility while being detained under the Chapter 4A of the Public Health Act 2005, the person in charge of the facility may make arrangements for the person to be returned.

This is achieved under the provisions of the Public Health Act 2005 that are equivalent to the ‘patient required to return’ provisions under the Mental Health Act 2016. Under the provisions, the person in charge of a public sector health service facility may authorise an authorised person, including a police officer or an ambulance officer, to return the person. An authorisation under this Act is in force for 3 days.

Warrant provisions also enable an authorised person to enter premises to detain a person for transport under the Act.
Specific Authorities for Authorised Persons to Transport Persons

1. Under an examination authority - to an authorised mental health service or public sector health service facility (section 32)
2. Under a recommendation for assessment – to an authorised mental health service or public sector health service facility (section 44)
3. Classified patient, where a recommendation for assessment, administrator consent and custodian consent is in force - from a place of custody to an inpatient unit of an authorised mental health service (section 65)
4. Classified patient, where a transfer recommendation, administrator consent and custodian consent is in force (sections 66 and 67) - from a place of custody to an inpatient unit of an authorised mental health service
5. Classified patient, where the Chief Psychiatrist consents to the transfer by written notice – from a place of custody to an authorised mental health service (section 73)
6. Classified patient, where a custodian is notified of a ‘return event’ – from an authorised mental health service to a place of custody (section 83)
7. Where the Mental Health Court decides a person is fit for trial and is to be detained in an authorised mental health service – from a court to an authorised mental health service (section 124)
8. Where the Mental Health Court makes a forensic order or treatment support order for a person and orders the person be an inpatient – from a court to an authorised mental health service or the forensic disability service (sections 149 and 150)
9. Where a Magistrate makes an examination order for a person and orders the person be transported immediately to an authorised mental health service – from a court to an authorised mental health service (section 177)
10. Where a Supreme Court or District Court orders a plea of not guilty for a defendant, refers the matter to the Mental Health Court, and orders the person be detained to an inpatient of an authorised mental health service – from a court to an inpatient unit of an authorised mental health service and return (section 188)
11. Where a Supreme Court or District Court makes a forensic order (Criminal Code) – from a court to an authorised mental health service and return (section 191)
12. Where a court decides a defendant is to be detained in an authorised mental health service during a trial – from a court to an inpatient unit of an authorised mental health service and return (section 197)
13. Between authorised mental health services, between an authorised mental health service and an interstate mental health service, and between an authorised mental health service and the forensic disability service (section 357).
'Patients Required to Return' (section 363)

Chapter 11, Part 6, Division 3 of the Act (Transport of absent persons) applies if:

(a) a person absconds while being lawfully detained under this Act or in a person’s charge under section 622

(b) a person subject to a treatment authority, forensic order or treatment support order is being treated in the community and the person does not attend at an authorised mental health service or public sector health service facility as required under the authority or order

(c) a treatment authority, forensic order, treatment support order or judicial order is made for a person requiring the person to be detained in an authorised mental health service and the person is not in an authorised mental health service when the authority or order is made

(d) the category of a patient’s treatment authority, forensic order or treatment support order is changed to inpatient

(e) a forensic patient is receiving limited community treatment and the Chief Psychiatrist orders the suspension of the treatment under section 313

(f) the Chief Psychiatrist orders the category of a patient’s forensic order to be changed to inpatient under section 313

(g) a patient is temporarily absent from an authorised mental health service under section 221, or receiving limited community treatment, and either of the following applies—
   (i) the patient does not return to the authorised mental health service at the end of the absence or treatment
   (ii) the approval of the absence, or authorisation of the treatment, is revoked

(h) a person does not attend at an authorised mental health service as directed under section 56 or 99

(i) a person subject to an examination order under section 177 does not attend at an authorised mental health service or public sector health service facility as directed under the order, or

(j) a person does not attend for an examination as directed by the Tribunal under section 721.