Examination Authorities

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General

The Mental Health Act 2016 (the Act) promotes the voluntary engagement of people requiring mental health treatment and care. In circumstances where voluntary engagement is not successful, an Examination Authority may be required to respond to serious concerns about a person’s mental health and wellbeing.

Examination Authorities are issued by the Mental Health Review Tribunal (MHRT).

An Examination Authority authorises a doctor or authorised mental health practitioner to examine a person without the person’s consent, to determine whether a recommendation for assessment should be made.

Scope

This policy is mandatory for all authorised mental health services (AMHSs). An authorised doctor, authorised mental health practitioner, AMHS administrator, or other person performing a function or exercising a power under the Act must comply with this policy.

Clinicians should work collaboratively with and in partnership with persons to ensure their unique age-related, cultural and spiritual, gender-related, religious and communication needs are recognised, respected and followed to the greatest extent practicable. Clinicians should consider the timely involvement of appropriate local supports and provide treatment and care with a recovery-oriented focus.

This policy must be implemented in a way that is consistent with the objects and principles of the Act.

Policy

An Examination Authority may be appropriate where there is a concern that a person needs to be assessed, but it has not been possible for the person to be examined by a doctor or authorised mental health practitioner.

Where immediate and serious risk is identified or indicated an Examination Authority is inappropriate. The Queensland Ambulance Service or Queensland Police Service should be contacted to determine if an Emergency Examination Authority should be enacted under the Public Health Act 2005.
1 Examination Authority criteria

Key points

The MHRT must consider that all of the following apply to the person the subject of the application:

- the person has, or may have, a mental illness, and
- the person does not, or may not, have capacity to consent to treatment, and
- either:
  - reasonable attempts at voluntary engagement have been unsuccessful, or
  - it is not practicable to engage the person voluntarily, and
- there is, or may be, an imminent risk because of the person’s mental illness of either:
  - serious harm to the person or others, or
  - the person suffering serious mental or physical deterioration.

The criteria for making an Examination Authority is set out in Chapter 12, Part 8 of the Act.

2 Voluntary Engagement

Attempts must be made to engage the person in voluntary assessment or treatment. Every reasonable effort should be made by the AMHS to gather relevant information and try to assess the person in a voluntary capacity.

Examples of where it may not be practicable to engage a person voluntarily include:

- attempts have already been made by the applicant,
- relationships between the applicant and the subject of the application do not support attempts at voluntary engagement,
- a rapid, but not immediate, response is required, or
- entry to premises is required to enable an examination of the person.

If a concerned person contacts an AMHS in relation to making an Examination Authority, the AMHS must provide the concerned person with information about how mental health services can be accessed voluntarily. This information should include:

- contact details and avenues for support in relation to accessing public sector mental health services, and
- where relevant or appropriate, contact details for non-government services that may be appropriate for the person.
3 Person the subject of application known to AMHS

Key points

Before making/supporting an application for Examination Authority, the AMHS should review CIMHA to check if the person, the subject of the application, is already open to another AMHS to ensure an Examination Authority is not made unnecessarily.

If the person subject to the application is open to another AMHS:

- the AMHS that receives the application must attempt to contact the patient and, if required, review as soon as possible,
- the AMHS that receives the application should contact the patient’s treating AMHS to provide information about the applicant’s concerns, and
- if the AMHS provides an outreach service to a current patient of another AMHS as a result of the concerned person’s application, this must be documented in the patient’s clinical record on CIMHA.

The fact that a person is already engaged in mental health treatment must not be disclosed to the applicant.

4 Application for Examination Authority

If voluntary engagement is unsuccessful or not practicable, an Application for Examination Authority may be made to the MHRT.

Key points

An Application for Examination Authority may be made by:

- the administrator of an AMHS (or delegate),
- a person authorised in writing by the AMHS administrator to make an application (e.g. the clinical director of an AMHS, an authorised doctor or authorised mental health practitioner), or
- a concerned person (e.g. a family member, friend, colleague, or other member of the person’s community who has concerns about the person’s wellbeing).

A concerned person making an application must seek clinical advice from a doctor or authorised mental health practitioner before an Application for Examination Authority may be made.
Clinical advice can be sought from any doctor (e.g. general practitioner, psychiatrist, etc.) or an authorised mental health practitioner at an AMHS.

- Where possible, the applicant should attend in person when seeking advice from a doctor or authorised mental health practitioner to enable the signed, written statement of advice (Part B to the Application for Examination Authority) to be provided with the application.
- If required, advice may be obtained over the phone and the written statement provided electronically by the doctor or authorised mental health practitioner.

The advice of the doctor or authorised mental health practitioner **must** address:

- general information about the treatment criteria under the Act, and how these criteria may apply to the person,
- whether there is a less restrictive way\(^1\) for the person to access mental health services, including through voluntary engagement with services,
- whether the person’s behaviours and other factors (e.g. treatment history, attempts already made for voluntary engagement, etc.) as described by the applicant could reasonably be considered to satisfy the Examination Authority criteria,
- options for the treatment and care of the person, and
- how the person may be encouraged to have a voluntary examination.

Any advice provided by the doctor or authorised mental health practitioner **must** be provided in a general manner and **must** not result in the disclosure of any confidential information.

If the concerned person has attended an AMHS to make the Application, the AMHS should take responsibility for making an Application for Examination Authority if the clinical advice supports the Application.

- This allows the AMHS opportunity to further engage the patient voluntarily, without disclosing to the concerned person any actions that may be taken by the AMHS. This is particularly important if the person the subject of the application is already engaged in mental health treatment.

If the concerned person continues to express a desire to make an Application for an Examination Authority, they should be supported to make this application.

The application can be emailed to the MHRT at enquiry@mhrt.qld.gov.au.

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\(^1\) Examples of Less Restrictive Way include consent provided via an Advance Health Directive or Substitute Decision Maker. For more information see the Chief Psychiatrist Policy - Treatment criteria, assessment of capacity, less restrictive way and advance health directives and the Less Restrictive Way guidelines.
The application must be completed in full and must indicate:

- whether there are particular concerns by the applicant regarding confidentiality (see section 5) and the reasons for these concerns, and
- whether the applicant agrees to be notified less than three (3) days prior to the MHRT hearing, and the time period to which the applicant agrees to be notified (e.g. one to two days prior).

The MHRT must hear an Application for Examination Authority as soon as practicable. The applicant will be notified in writing of the hearing date and time, three (3) days before it is scheduled (or a shorter period if they have agreed).

5 Limitations to Confidentiality

Being identified as a person instrumental in the involuntary examination process may be of concern to the applicant and others involved and could potentially put such persons at risk.

The person subject to an Examination Authority is entitled to a copy of the Authority.

This entitlement does not extend to a copy of the Application for Examination Authority. The applicant and clinician details are treated as confidential in the process of carrying out the examination.

However, any person has the right to apply for access to documents in relation to an Examination Authority under the Right to Information Act 2009 or Information Privacy Act 2009.

This includes applying to access an Application for Examination Authority.

Applicant and clinician information is therefore potentially accessible if a formal written application is made under the Right to Information Act 2009 or Information Privacy Act 2009.

- A decision to grant access to an Application for Examination Authority is made by a Right to Information decision maker.

Where there is a concern about information possibly being released to the person the subject of the examination, the applicant and/or the clinician, providing advice should state the reasons for this concern and the need for further consultation in the event an application to access the information is made under the Right to Information Act 2009 or Information Privacy Act 2009. This will alert the Right to Information decision maker that special consideration is required in determining whether information should be released.

More information regarding the right to information process is available at: https://www.health.qld.gov.au/system-governance/contact-us/access-info/rti-application/

The Right to Information Act 2009 governs applications for non-personal information; the Information Privacy Act 2009 governs applications for the applicant’s own personal information.
6 Clinician responsibilities

Key Points

The doctor or authorised mental health practitioner’s advice is made solely on information provided by the applicant.

- Applicants must be made aware that providing false or misleading information may result in a penalty.

A doctor or authorised mental health practitioner who is providing advice to an applicant must not disclose any confidential patient information about the person the subject of the application.

- This includes, but is not limited to, confirming information provided by the applicant (e.g. the clinician must not confirm whether the person is already accessing mental health services).

If the doctor or authorised mental health practitioner completes Part B of the Application, they may be contacted by the MHRT at a later time to verify the information made in the statement.

A copy of the Application should be attached to a CIMHA clinical note documenting the concerns raised by the applicant. If the subject of the application does not have a CIMHA record, a new consumer record must be created to enable the document to be uploaded.

7 Examination

Key points

- If an Examination Authority is issued by the MHRT, the Authority will state the AMHS responsible for carrying out an examination of the person.

- A copy of the Examination Authority will be sent to the Administrator of the AMHS by the MHRT. The Authority is in force for seven (7) days from the date it is issued.

- The Administrator must make arrangements for a doctor or authorised mental health practitioner to examine the person within seven (7) days. The examination can occur without the person’s consent.

- The Examination Authority must be uploaded to CIMHA.
7.1 Powers under Examination Authority

**Key points**

Under the Examination Authority, a doctor or authorised mental health practitioner for the AMHS may:

- enter a place, including a person’s home, without the consent of the person, to carry out the examination,
- transport the person to an AMHS or public sector health service facility (PSHSF) to carry out the examination, and
- detain the person:
  - in an AMHS or PSHSF for up to six (6) hours, or
  - at the place they are found for up to one (1) hour.

If required, a doctor or authorised mental health practitioner may use force, or request police assistance, to enter a place without a person’s consent.

- Force should not be used to enter premises unless the person has first been given an opportunity to provide consent.

As far as practicable, the use of force under an Examination Authority should be avoided.

A warrant is not required to enter a person’s home for the purposes of carrying out an examination under an Examination Authority.

If the examination needs to take place in an AMHS or PSHSF, an authorised person may transport the patient without their consent.

- The transport must comply with the [Chief Psychiatrist Policy – Transfers and transport](#).

7.2 Patient rights under an Examination Authority

The doctor or authorised mental health practitioner must explain in general terms, the nature and effect of the Examination Authority and provide a copy of the authority to the person if requested.

Reasonable steps must be taken to ensure the patient understands the information. This may include use of an interpreter or other methods of communication, such as sign language, written explanations or explanation with assistance from a support person.

- This explanation is not required if the doctor or authorised mental health practitioner reasonably believes providing the explanation would prevent the clinician from completing the examination.

The doctor or authorised mental health practitioner must also provide a copy of the authority to the person’s nominated support person/s, personal guardian or attorney upon request.
8 Examination outcomes

Key points

Following an examination, the doctor or authorised mental health practitioner must decide whether to make a Recommendation for Assessment for the person.

- The outcome must be recorded on an Outcome of Examination Under Examination Authority form and uploaded on CIMHA.

If a Recommendation for Assessment is made for the person, the Chief Psychiatrist Policy – Examination and assessment must be complied with.

Issued under section 305 of the Mental Health Act 2016

Dr John Reilly
Chief Psychiatrist, Queensland Health
30 April 2020
Definitions and abbreviations

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td>AMHS</td>
<td>Authorised Mental Health Service – a health service, or part of a health service, declared by the Chief Psychiatrist to be an authorised mental health service. AMHSs include both public and private sector health services. While treatment and care is provided to both voluntary and involuntary patients, additional regulation applies under the Act for persons subject to involuntary treatment and care.</td>
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<td>CIMHA</td>
<td>Consumer Integrated Mental Health Application – the statewide mental health database which is the designated patient record for the purposes of the Act</td>
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<td>MHRT</td>
<td>Mental Health Review Tribunal</td>
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<td>PSHSF</td>
<td>Public Sector Health Service Facility</td>
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Referenced forms, clinical notes and templates

Form: Application for Examination Authority

Form: Outcome of Examination Under Examination Authority

Referenced documents and sources

Chief Psychiatrist Policy – Examination and assessment

Chief Psychiatrist Policy – Transfers and transport

Document status summary

Date of Chief Psychiatrist approval: 30 April 2020

Date of effect: 1 June 2020

Supersedes version that took effect on: 5 March 2017

To be reviewed by: 1 June 2023
## Attachment 1 – Key contacts

### Key contacts

<table>
<thead>
<tr>
<th>Office of the Chief Psychiatrist</th>
<th>Phone: 07 3328 9899 / 1800 989 451</th>
<th>Email: <a href="mailto:MHA2016@health.qld.gov.au">MHA2016@health.qld.gov.au</a></th>
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<tr>
<td>Mental Health Review Tribunal</td>
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<td>Email:</td>
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<td>Local Acute Care Team</td>
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