

## Mental Health Act 2016

### Chief Psychiatrist Policy

# Examination and assessment

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# General

The Act promotes the voluntary engagement of people in mental health assessment, treatment and care wherever possible. When it is not possible to provide the required examination and assessment with consent, the involuntary processes in the *Mental Health Act 2016* (the Act) may be applied.

A doctor or authorised mental health practitioner (AMHP) may examine a person to decide if a Recommendation for Assessment should be made for the person. The purpose of the assessment is to decide whether a Treatment Authority should be made to authorise involuntary treatment and care for the person during the period when they have no capacity to consent to the treatment.

Strict criteria and requirements apply to making a Recommendation for Assessment and undertaking an involuntary assessment.

## Scope

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

This policy **must** be read in conjunction with the Chief Psychiatrist Policy – Treatment Criteria, Assessment of Capacity and Less Restrictive way of Treatment.

Clinicians should work collaboratively and in partnership with patients 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 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

### 1 Examination and assessment

#### 1.1 Examinations for Recommendation for Assessment

A doctor or AMHP may examine a person to decide if a Recommendation for Assessment should be made for the person.

A person may be examined by a doctor or AMHP at any location that is clinically appropriate, including in an AMHS, a public sector health service facility (PSHSF) or a person's home.

An examination may be undertaken by audio-visual link if the doctor or AMHP examining the person believes it is clinically appropriate.

## 1.2 Making a Recommendation for Assessment

A Recommendation for Assessment can only be made if the doctor or AMHP has examined the person within the last **seven (7) days**.

The doctor or AMHP can only make the Recommendation for Assessment if satisfied that:

- the treatment criteria may apply to the person, and
- there appears to be no less restrictive way for the person to receive treatment and care for the person's mental illness.

The [Flowchart – Determining if a Recommendation for Assessment can be made](#) sets out the decision-making process for making a Recommendation for Assessment.

### 1.2.1 Treatment Criteria

The 'treatment criteria' means all of the following:

- the person has a mental illness,
- the person does not have capacity to consent to be treated for the illness, and
- because of the person's illness, the absence of involuntary treatment or the absence of continued involuntary treatment, is likely to result in:
  - imminent serious harm to the person or others, or
  - the person suffering serious mental or physical deterioration.

The doctor or AMHP must be satisfied that the **treatment criteria may** apply to the person. A definitive conclusion is not required, however there must be sufficient evidence to support their view on each criterion.

For further information on the treatment criteria please refer to the [Chief Psychiatrist Policy - Treatment Criteria, Assessment of Capacity and Least Restrictive Way and Advance Health Directives](#).

### 1.2.2 Less Restrictive Way

The 'less restrictive way' of receiving treatment and care refers to alternatives to involuntary treatment under a Treatment Authority.

A Recommendation for Assessment may only be made if there appears to be no less restrictive way for the patient to receive treatment and care.

In order to meet this requirement, the doctor or AMHP needs to consider if, after an examination of the person, it is likely that the person would not be able to receive treatment or care under one of the following less restrictive ways:

- if the person is a minor - with the consent of a parent,

- under an Advance Health Directive (AHD) - with consent provided in directions in the AHD or with the consent of an attorney appointed under the AHD,
- with the consent of a guardian appointed for the person.
- with the consent of an attorney appointed under an Enduring Power of Attorney (EPOA), or
- with the consent of a statutory health attorney.

Less restrictive ways **must** be considered in the order listed above.

The doctor or AMHP need only be satisfied that there **appears** to be no less restrictive way. This recognises the clinical circumstances in which an examination by a doctor or AMHP may occur (i.e. obtaining definitive information will not be practicable in many circumstances) and that more comprehensive information gathering of less restrictive options will occur in the involuntary assessment process.

For a complete and detailed version of the less restrictive way please refer to the [Chief Psychiatrist Policy - Treatment Criteria, Assessment of Capacity, Less Restrictive Way and Advance Health Directives](#).

## 1.3 Information to be provided

If a Recommendation for Assessment is made, the doctor or AMHP **must** tell the person and their support person/s of the decision and the effect of the recommendation. This includes an explanation of the doctor's or health practitioner's view in relation to the treatment criteria. For the person, the explanation will take account of clinical considerations and minimising any potential adverse impact on the person's health and wellbeing.

Support person/s here means an appointed nominated support person or, if the person has not appointed a nominated support person, then a family member, carer or other support person.

A copy of the Recommendation for Assessment form may be requested by the person, their appointed nominated support person/s, guardian or attorney under an AHD or EPOA. A copy of the Recommendation for Assessment form **must** be provided on request. However, a copy is not required to be provided to the person if the doctor or AMHP believes that this may adversely affect the person's health and wellbeing.

## 1.4 Recording requirements

The Recommendation for Assessment (if made) **must** be completed electronically in CIMHA or, if this is not practicable, completed in hard copy and uploaded to CIMHA.

In addition, a record of the doctor or AMHP's examination must be documented in, or uploaded to, CIMHA clinical notes. The documentation is to include:

- a record of the examination, including information obtained from the person and other sources, and the details of the mental state examination,
- the evidence relating to mental illness, capacity to consent, and risks associated with harm or serious deterioration,
- if the person lacked capacity to consent and the doctor or health practitioner identified that the person had an AHD or alternate decision maker, the actions taken and the outcome of those actions, or the reasons why action was not taken,
- if the doctor or health practitioner determined the assessment could be conducted on the basis of consent given in an AHD or by an alternate decision maker, a clear statement of the consent provided i.e. including a record of consent for detention where this is expressly stated in the AHD or explicitly provided by the alternate decision maker, and
- the information provided to the person, and where relevant, their support person/s, or the reasons for not providing the information to the person.

If the doctor or health practitioner identifies an AHD, EPOA or Queensland Civil and Administrative Tribunal (QCAT) decision maker that is not already recorded in CIMHA, the document must be uploaded to CIMHA as soon as practicable. (Refer to [CIMHA Clinician Handbook Vol 6: MHA 2016](#)).

## 1.5 Detention for the purpose of making a Recommendation for Assessment

A doctor or AMHP may detain a person for a period of not more than **one (1) hour** for the purpose of making a Recommendation for Assessment if:

- the person is at an AMHS or PSHSF and has been examined on a voluntary basis (e.g. the person is not subject to detention under an Emergency Examination Authority or Examination Authority at the time),
- having examined the person, the doctor or health practitioner decides to make a Recommendation for Assessment, and
- there is a risk that the person will leave the AMHS or PSHSF before the Recommendation for Assessment is made.

Before detaining the person, the doctor or health practitioner **must** make reasonable efforts to:

- if relevant, identify themselves to the person,
- tell the person a Recommendation for Assessment will be made and the nature and effect of the document, and
- give the person an opportunity to remain while the Recommendation for Assessment is made.

If the person is to be detained for the purpose of making a Recommendation for Assessment, the doctor or health practitioner **must** make reasonable efforts to tell the person that they are detained for not more than **one (1) hour**.

The reasons for, and duration of, the detention **must** be documented on the Recommendation for Assessment form.

A doctor or AMHP may exercise these powers with help and with the force that is reasonable and necessary in the circumstances.

## 1.6 Revoking a Recommendation for Assessment

The doctor or AMHP who makes a Recommendation for Assessment may revoke the recommendation at any time before the start of the assessment if the doctor or health practitioner is no longer satisfied:

- the treatment criteria may apply to the person, or
- there appears to be no less restrictive way for the person to receive treatment and care for the mental illness.

The doctor or AMHP **must** complete a [Revocation of Recommendation for Assessment form](#) stating the reasons for the revocation. The Revocation of Recommendation for Assessment is to be completed electronically or, if this is not practicable, completed in hard copy and uploaded to CIMHA.

## 2 Assessment under a Recommendation for Assessment

### 2.1 General requirements for assessment by an authorised doctor

The person's assessment under a Recommendation for Assessment **must** be undertaken within **seven (7) days** of the making of the Recommendation for Assessment.

The assessment, undertaken by an authorised doctor, is to determine if a Treatment Authority should be made to authorise involuntary treatment and care for the person during the period when they have no capacity to consent to the treatment.

The authorised doctor making the assessment must discuss the assessment with the person and their support person/s. This includes, for example, explaining the reasons for the assessment and the outcomes of the assessment.

A Treatment Authority can only be made for a person, if after undertaking an assessment the authorised doctor determines that:

- the treatment criteria apply to the person, and
- there is no less restrictive way for the person to receive treatment for the mental illness.

The assessment may occur by audio-visual technology if it is considered clinically appropriate in the circumstances.

The assessment cannot be undertaken by the doctor who made the Recommendation for Assessment, unless the doctor is a doctor for an AMHS (rural and remote) and is the **only** authorised doctor reasonably available to make the assessment

Additional information about requirements for making a Treatment Authority is provided in the [Chief Psychiatrist Policy Treatment Authorities](#).

## 2.2 Location of assessment and transport

An assessment under a Recommendation for Assessment may be undertaken at:

- an authorised mental health service (AMHS),
- a public sector health service facility (PSHSF), or
- another location that the authorised doctor considers clinically appropriate e.g. the person's home.

A person subject to a Recommendation for Assessment may be transported to an AMHS or PSHSF for the purposes of the assessment. The transport must comply with the *Chief Psychiatrist Policy Transfers and Transport*.

Assessments under a Recommendation for Assessment **cannot** be made in custodial settings.

A person in custody who is subject to a Recommendation for Assessment may be transported by an authorised person to an inpatient unit of an AMHS for the assessment. Refer to [Chief Psychiatrist Policy Classified Patients](#).

## 2.3 Detention for assessment at an AMHS or PSHSF

If the assessment is to be conducted at an AMHS or PSHSF the person may be detained for the assessment.

### 2.3.1 Commencement of assessment period

If the assessment is conducted at an AMHS or PSHSF, the commencement of the assessment period **must** be recorded on the Recommendation for Assessment form.

The start of the assessment period is recorded as follows:

- If the person is at the AMHS or PSHSF when the Recommendation for Assessment is made, the time the Recommendation is made i.e. the date and time recorded on the declaration at section 5 of the *Recommendation for Assessment form*.
- If a person subject to a Recommendation for Assessment is transported to or presents at an AMHS or PSHSF at a later time, the assessment period will commence when the person first attends the AMHS or PSHSF for the assessment.

- A health service employee must record the date and time the person attends under the Start of assessment period at section 6 of the Recommendation for Assessment form.

### 2.3.2 Duration and extension of assessment period

The person may be detained for the assessment for a period of up to **twenty-four (24) hours**.

Where an extension is necessary to complete an assessment, an authorised doctor making the assessment may extend the period of detention. However, the period cannot exceed **seventy-two (72) hours** from when the detention period commenced.

The authorised doctor must record the extension of the assessment period on the *Recommendation for Assessment form*. If the recommendation was made electronically in CIMHA, the extension is to be completed electronically or, if this is not practicable, completed in hard copy and provided to the AMHS Administrator to be uploaded to MHA forms module.

## 2.4 Assessment at a place other than an AMHS or PSHSF

A person subject to a Recommendation for Assessment may be assessed at a location other than an AMHS or PSHSF (e.g. the person's place of residence) if the authorised doctor considers it clinically appropriate.

The person is not detained for the purposes of the assessment. The assessment period on the Recommendation for Assessment is not commenced in this instance.

If attempts to undertake the assessment at an alternate location are unsuccessful, arrangements may be made for the person to be transported to, and detained at, an AMHS or PSHSF (as provided above) within **seven (7) days** of the making of the Recommendation for Assessment.

## 2.5 Authorised doctor responsibilities if Treatment Authority not made

If the authorised doctor who undertakes the assessment decides not to make a Treatment Authority, they must inform the person and their support person/s of:

- the decision and the basis of the decision (i.e. the reasons the doctor determined that the treatment criteria did not apply or how treatment and care for the person's mental illness is proposed to be provided in a less restrictive way), and
- the effect of the decision (e.g. that the person is no longer subject to the involuntary processes of the Act).

The authorised doctor must make a record of the decision and the reasons for the decision on the Recommendation for Assessment form. If the recommendation was made electronically in CIMHA, the decision and reasons are to be completed electronically on the Recommendation for Assessment form or, if this is not practicable, completed in hard copy and provided to the AMHS Administrator to be uploaded to MHA forms module.

## 2.6 Administrator responsibilities for transport after assessment

The AMHS Administrator **must**, in specified circumstances, take reasonable steps to facilitate the person's transport following an examination or assessment (i.e. if detention is no longer required). This includes circumstances where the person was transported from a place in the community to an AMHS or PSHSF under:

- an Examination Authority, or
- a Recommendation for Assessment, or
- an Emergency Examination Authority if a Recommendation for Assessment is made.

Reasonable steps for returning the person include, but are not limited to, providing the person with means to utilise public transport such as taxi, bus, train or ferry.

A person who attends an AMHS or PSHSF under an Examination Order made by a Magistrate should also be reasonably assisted to return to a reasonable place once they are no longer required to be at the AMHS or PSHSF.

## 3 Providing information about rights

The Administrator of an AMHS **must** ensure appropriate arrangements are in place to provide persons admitted to an AMHS with an explanation of the [Statement of Rights](#).

This includes persons admitted on the basis of a Recommendation for Assessment or consent (i.e. under an AHD or alternate decision maker). The arrangements **must** clearly identify who is responsible for providing the explanation and ensure that the explanation is provided in a timely way.

The explanation about rights **must** be provided to the person and their support person/s. If requested by the person or their support person/s, a copy of the Statement of Rights **must** be provided.

If the explanation is provided by a clinician and the clinician considers that the person is unable to understand the explanation (e.g. as a consequence of their mental state), the clinician should ensure that the explanation is provided at a later time.

The clinician may seek the assistance of an Independent Patient Rights Adviser to provide further explanation.

The clinician must document their actions in the person's clinical record, including the persons to whom the explanation was provided and, if relevant, further actions taken to ensure to person's understanding of their rights.

Dr John Reilly  
Chief Psychiatrist, Queensland Health  
15 April 2020

## Definitions and abbreviations

Term	Definition
AHD	Advance Health Directive – A document stating the person’s consent to health care that comes into effect when the person does not have capacity to make health care decisions. The directions may include consent to special health care e.g. electroconvulsive therapy <sup>1</sup> .
Alternate decision maker	An individual/s who is/are authorised to make health care decisions for a person who lacks capacity to consent including, a parent (for a minor), an attorney appointed under an Advance Health Directive (AHD) or Enduring Power of Attorney (EPOA), a guardian, or a Statutory Health Attorney.
AMHS	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.
Attorney under an AHD	an individual/s appointed by the person to exercise power for a health matter in the event that directions in an AHD prove inadequate. A health matter is a matter relating to health care, other than special health care.
Attorney under an Enduring Power of Attorney	An individual/s appointed by the person to do anything in relation to personal matters that the person could have done if the person had capacity for the matter. A personal matter is a matter relating to the person’s care including health care or welfare, excluding special health care.
CIMHA	Consumer Integrated Mental Health Application – the statewide mental health database which is the designated patient record for the purposes of the Act.

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<sup>1</sup> See *Guide to Advance Health Directives, Enduring Powers of Attorney and Guardians* for further information.

Term	Definition
EPOA	Enduring Power of Attorney
Guardian	A person appointed by the Queensland Civil and Administrative Tribunal (QCAT) to do, in accordance with the terms of appointment, anything in relation to a personal matter that the individual could have done if the individual had capacity. The person may be appointed to make decisions about all personal matters or specified personal matters e.g. health care (excluding special health care), accommodation, provision of services.
HHBA	<i>Hospital and Health Boards Act 2011</i>
Minor	A person under the age of eighteen (18) years.
MHRT	Mental Health Review Tribunal
Parent	<p><i>Parent</i> – includes:</p> <ul style="list-style-type: none"> <li>• a guardian of the minor (under the Child Protection Act 1999), or</li> <li>• an individual who exercises parental responsibility for the minor, other than on a temporary basis (e.g. child minding), or</li> <li>• <i>for an Aboriginal minor</i>: an individual who, under Aboriginal tradition, is regarded as a parent of the minor, or</li> </ul> <p><i>for a Torres Strait Islander minor</i>: an individual who, under Island custom, is regarded as a parent of the minor.</p>
PSHSF	Public Sector Health Service Facility
Statutory Health Attorney	<p><i>For a health matter, the first in listed order of the following people who is readily available and culturally appropriate for the matter:</i></p> <p>a spouse of the person if the relationship is close and continuing</p> <p>an adult (i.e. 18 years or more) who has care of the person and is not a paid carer for the person</p> <p>an adult who is a close friend or relation of the person and is not a paid carer for the person.</p> <p>If none of the above listed people is available and culturally appropriate, the Public Guardian is the person's statutory health attorney for the matter.</p>
Support person	An appointed nominated support person or, if the person does not have a nominated support person, a family member, carer or other support person

## Referenced forms, clinical notes and templates

[Recommendation for Assessment form](#)

[Revocation of Recommendation for Assessment form](#)

## Referenced documents and sources

[Chief Psychiatrist Policy – Advance Health Directives and ‘Less Restrictive Way’ of Treatment](#)

[Chief Psychiatrist Policy – Treatment Criteria and Assessment of Capacity](#)

[Chief Psychiatrist Practice Guidelines – Transfers and Transport](#)

[Chief Psychiatrist Practice Guidelines – Treatment Authorities](#)

[Queensland Health Guide to Informed Decision-making in Healthcare](#)

CIMHA Clinician Handbook Vol 6: MHA 2016

[Flowchart – Determining if a Recommendation for Assessment can be made](#)

[Mental Health Act 2016](#)

## Document status summary

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# Attachment 1: Key contacts

## Key contacts

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**Statewide Coordinator Independent Patient Rights Advisers**

Phone: 07 3328 9243 / 0472 846 365  
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**Statewide Independent Patient Rights Adviser Contact List**

[Available on the Act website](#)

**Local Independent Patient Rights Adviser**

Phone:  
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