Involuntary Patients and the MHRT

A practical guide to the NSW mental health system

What does involuntary patient mean?

An involuntary patient is a person detained in a declared mental health facility under the Mental Health Act 2007 (NSW). Detention and treatment without consent can occur only through processes authorised by the Act.

The Act distinguishes between a mentally ill person and a mentally disordered person. Different criteria and time limits apply. This guide focuses mainly on longer involuntary detention and Mental Health Review Tribunal oversight.

The central legal test

For an involuntary patient order, the Tribunal considers whether the person is a mentally ill person: whether there is mental illness and reasonable grounds for believing care, treatment or control is necessary to protect the person or others from serious harm.

- The person?s continuing condition, including likely deterioration, must be considered.
- Any detention must be necessary and the least restrictive care reasonably available must be considered.
- Diagnosis alone is not enough; the statutory risk and necessity criteria must be addressed.
- Beliefs, preferences, identity or conduct cannot establish mental illness merely because they differ from prevailing community standards.

Admission, examination and inquiry

After arrival at a facility

A detained person must be examined within the time required by the Act, including an initial medical examination generally no later than 12 hours after arrival. Further required examinations determine whether detention should continue. A person who does not meet the legal criteria must not remain detained under that process.

Statement of rights

The facility must explain and provide the statutory statement of rights. It describes examination, contact with carers and legal representatives, the mental health inquiry and ways to seek review. Ask for an interpreter or accessible explanation if needed.

The mental health inquiry

The MHRT conducts an inquiry to decide whether continued involuntary detention is lawful and necessary. Mental health inquiries are generally conducted by a legal member. The Tribunal considers clinical evidence, the patient?s evidence and submissions, risk, available supports and less restrictive alternatives.

Possible outcomes

- Discharge from involuntary detention.
- Deferred discharge to allow safe arrangements to be made.
- An involuntary patient order for a period determined by the Tribunal, initially up to the statutory maximum.
- Consideration of community-based care where appropriate, including whether a Community Treatment Order process is available.

Rights at an MHRT hearing

Participation and representation

- To attend and participate in the hearing, including by the method arranged by the Tribunal.
- To be legally represented; Legal Aid NSW commonly provides representation for eligible Tribunal matters.
- To use an interpreter where required and request adjustments for communication or disability.
- To give evidence, explain wishes and propose a less restrictive treatment and support plan.
- To have a support person present where permitted and appropriate.
- To receive reasons and understand the order made.

Information and privacy

Patients and representatives should receive appropriate notice and access to relevant hearing material, subject to lawful restrictions. In limited cases, information may be withheld where legislation permits. Tribunal hearings are generally private and information is protected by confidentiality rules.

What the Tribunal may ask about

- Current symptoms, diagnosis, treatment response and side effects.
- Recent events and the asserted risk of serious harm.
- Insight, decision-making, relapse indicators and previous admissions.
- Housing, income, family or carer support and community services.
- Whether medication, appointments and safety can be managed voluntarily.
- Why the proposed plan is the least restrictive safe option.

Prepare a practical alternative

A clear plan can be important: where the patient will live, who will assist, treating practitioners, appointments, medication concerns, transport, finances and steps for responding if health deteriorates.

Treatment, reviews and practical help

Treatment and everyday rights

Involuntary status can permit treatment without consent in circumstances authorised by the Act, but it does not remove all rights. Care should respect dignity, safety, privacy, communication, cultural needs and the principle of least restrictive treatment. Special rules apply to procedures such as electroconvulsive therapy.

- Ask the treating team to explain the diagnosis, proposed treatment, benefits, risks and alternatives.
- Raise side effects, physical health issues and preferences promptly.
- Ask about leave, discharge planning and support from the nominated or designated carer.
- Request a second opinion or legal advice where appropriate.

Further orders and review

A facility seeking detention beyond an existing order must apply for a further involuntary patient order before it expires. The MHRT also deals with Community Treatment Orders, certain treatment applications and other reviews and appeals. Time limits and available pathways depend on the order and decision.

Preparing for legal advice

- Keep the rights statement, Tribunal notice, current order and available clinical reports.
- Write a short timeline and identify disputed facts or risk allegations.
- List medications, benefits, side effects and treatment preferences.
- Prepare contact details and written support from family, carers, housing providers and clinicians.
- Contact Legal Aid NSW or a solicitor promptly before the hearing.

Key sources

- Mental Health Act 2007 (NSW).
- NSW Mental Health Review Tribunal guidance on involuntary patient orders and hearings.
- NSW statutory Statement of Rights for persons detained in a mental health facility.

The least restrictive appropriate care must be considered

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