

All admissions to a mental health unit in NSW are subject to the NSW Mental Health Act 2007. The NSW Mental Health Act 2007 is a law that governs the care and treatment of people in NSW who experience mental illness or a mental disorder. The Act aims to ensure that people receive the best possible care and treatment in the least restrictive way.

There are two ways that a person can be admitted to a mental health unit: as a voluntary patient, or an involuntary patient.

1. Voluntary Admission

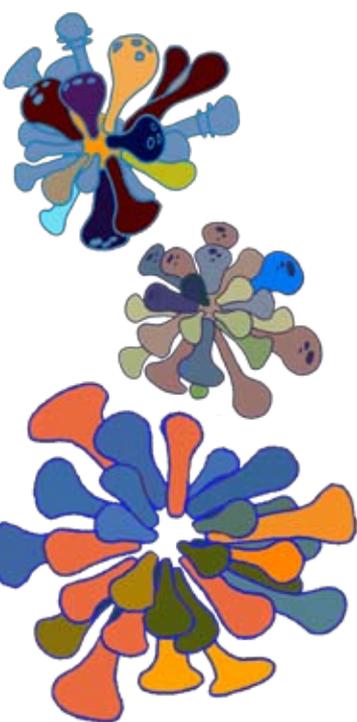
A person may be admitted to a mental health unit as a voluntary patient, if an authorised medical officer is satisfied that they are likely to benefit from care and treatment in a mental health facility, and the person agrees to the admission. An authorised medical officer is a doctor who has been given certain responsibilities under the Act.

2. Involuntary Admission

A person can also be admitted involuntarily, or against their will, to a mental health unit. The Mental Health Act sets out strict criteria that must be met in order for someone to be admitted to hospital against their will. Firstly, the person must be mentally ill or mentally disordered, as defined by the Act, and secondly there must be no other care of a less restrictive kind (such as a voluntary admission or support at home from family or a community mental health team) that is appropriate or reasonably available.

There are a number of steps to this process, beginning with getting the person to hospital for an assessment. In most cases, in order for a person to be brought to hospital against their will, a 'Schedule 1' needs to be completed. A Schedule 1 is a legal document that, once completed, means that a person can be taken to and detained at a declared mental health facility against their will, so that a further assessment of their mental state can be made. A Schedule 1 must be completed by a doctor or a specially qualified mental health worker (an Accredited Person) who has personally examined or observed the person. You may hear this referred to as 'scheduling' someone, or that the person has been 'scheduled'. Once the schedule is completed, family, friends or mental health workers may take the person to hospital. Sometimes police are asked to assist. Police and ambulance officers are able to request the assessment of a person at a declared mental health facility. A person can also be kept in hospital for an assessment on the written request of a Primary Carer.

The Mental Health Act contains many checks and balances. Once someone has been brought to hospital, or a declared mental health facility, they can only be further detained against their will, if two doctors agree that this is necessary and lawful under the Mental Health Act. One of these doctors must be a psychiatrist. Sometimes an examination by a third doctor may be necessary if the second doctor does not find the person to be mentally ill or mentally disordered. If the majority of these doctors believe that the person is mentally disordered, the person can be detained in hospital for no longer than three working days. If the majority of these doctors believe that the person is mentally ill, then the person is admitted and must be seen by the Mental Health Review Tribunal (MHRT) if they remain in hospital for more than two weeks.



The MHRT is an independent body that has powers to make decisions under the Mental Health Act. When a person has been brought to hospital against their will, it is the role of the MHRT to ensure that they are not kept in hospital against their will unless the requirements of the Mental Health Act have been met. At the initial hearing, the person will appear before a single member of the MHRT, usually a lawyer. At subsequent hearings there may be three members: a lawyer, a psychiatrist, and another suitably qualified person. The Tribunal will consider “evidence” from a variety of sources, including the patient, the patient’s family and hospital staff. Legal Aid NSW provides a lawyer free of charge for anyone appearing before the Tribunal. The hearing can happen via teleconference. Under the Mental Health Act, the Primary Carer must be notified of any proposed hearings. If the Primary Carer is unable to attend in person, written information can be provided to a member of the treating team who will then pass it on to the Tribunal for consideration.

At the Tribunal hearing an order may be made for the person to remain in hospital for treatment for up to 3 months, or the Tribunal may decide that the person should be discharged. Sometimes a person may be discharged on a Community Treatment Order (CTO). At the initial hearing, the Tribunal must also consider whether a Financial Management Order should be made.

At any stage during the person’s detention the person or their Primary Carer may apply to the Authorised Medical Officer for the person to be discharged. They must then be seen by a doctor and an answer must be given within three working days. If the answer is unsatisfactory, the person may appeal to the MHRT and the hospital must arrange for a hearing. The person can request legal representation for this hearing.

Community Treatment Order

A Community Treatment Order is a legal order made by the MHRT which is an alternative to involuntary treatment in a unit. It sets out the conditions under which a person must accept medication, therapy, rehabilitation or other services whilst not in hospital. It is implemented by the local Community Mental Health Team who will develop an appropriate treatment plan individualised for the person’s needs.

Family and Carers

Family members and friends are welcome to provide information to hospital staff. They may also provide this information to the legal aid representative and to the MHRT. This may include information about the unwell family member, their illness and the impact that the illness is currently having on the carer and the people around them.

Legal Aid NSW

The Mental Health Advocacy Service is part of Legal Aid NSW and provides free legal information, advice and assistance about mental health law. A brochure outlining their service is available on the unit.

