



Advance care planning and mental illness

including the differences between advance care directives and advance statements

This fact sheet is about advance care planning and mental illness.

If you are engaging in advance care planning and have previously had, or currently have, a mental illness, you should consider your legislative options to document:

- your preferences and values for any treatment for mental illness in either or both an advance statement or advance care directive
- who you would like to make medical treatment decisions for you
- who you would like to support you.

Mental Health Act 2014

The Mental Health Act primarily relates to patients who are subject to compulsory treatment for mental illness.

Advance statements

Under the Mental Health Act, you can make an advance statement, which is a document that sets out your preferences in relation to treatment in the event that you become a patient (that is, a person who is subject to compulsory treatment).

If you are a patient, then in making any treatment decisions, an authorised psychiatrist can only override your preferences if satisfied that the preferred treatment specified in the advance statement is not clinically appropriate or is not a treatment ordinarily provided by the mental health service.

A patient can request written reasons from the authorised psychiatrist.

Nominated person

You may nominate another person to be your nominated person.

The role of the nominated person is to:

- provide the patient with support
- receive information about the patient
- be consulted about the patient's treatment and assist the patient to exercise their rights under the Mental Health Act.

Electroconvulsive therapy (ECT)

If you are a person who is a patient under the Mental Health Act and you have decision-making capacity you can consent to the performance of a course of ECT.

If you do not have decision-making capacity to consent to the performance of a course of ECT, then the authorised psychiatrist can apply to the Mental Health Tribunal for an order.

If you have decision-making capacity and refuse ECT then the ECT cannot be performed.

You could indicate your preferences in relation to ECT in an advance statement.

Medical treatment

The Mental Health Act sets out who can make medical treatment decisions when a person is a patient (a person who is subject to compulsory treatment).

This is a different list to the hierarchy of medical treatment decision makers set out in the *Medical Treatment Planning and Decisions Act 2016*. It does not include spouse, domestic partner,

primary carer, adult child, parent or sibling (unless the person has appointed one of those people as a medical treatment decision maker, or if they have been appointed guardian by VCAT).

If you are a patient and do not have an appointed medical treatment decision maker or guardian, then the authorised psychiatrist can make a medical treatment decision.

Therefore, if you anticipate you could become a patient under the Mental Health Act, you should consider appointing someone to be your medical treatment decision maker if you do not want the authorised psychiatrist to have this decision-making power.

Medical Treatment Planning and Decisions Act 2016

Definitions

The definition of medical treatment includes treatment for mental illness.

Treatment for mental illness means things done in the course of the exercise of professional skills to remedy a person's mental illness or to alleviate the symptoms and reduce the ill effects of a person's mental illness.

Mental illness is a medical condition that is characterised by a significant disturbance of thought, mood, perception or memory.

Advance care directives

If you have decision-making capacity you can make an advance care directive in relation to medical treatment and medical research procedures. An advance care directive can include either or both an instructional directive and values directive.

Instructional directive

You can include an instructional directive in an advance care directive in which you either consent to, or refuse medical

treatment. This can include treatment for mental illness.

If you consent to or refuse the medical treatment in an advance care directive, your health practitioner must give effect to your instruction, unless there are permissible circumstances for the health practitioner to refuse to comply.

Values directive

You can include a values directive stating your preferences and values for medical treatment, including treatment for mental illness, which your medical treatment decision maker would have to consider in making any medical treatment decision.

Advance care directives and the Mental Health Act

If you become a patient under the Mental Health Act, then the authorised psychiatrist in making any treatment decision (that is, treatment for mental illness) must have regard to your views and preferences about treatment of your mental illness.

Therefore, an authorised psychiatrist could take into account your views and preferences expressed in an advance care directive.

However, an authorised psychiatrist does not have to give effect to medical treatment decisions in an advance care directive.

Medical treatment decision maker

If you have decision-making capacity to do so, you can appoint a medical treatment decision maker who can make medical treatment decisions for you if, in the future, you do not have decision-making capacity to make the medical treatment decision.

If you do not appoint someone to be your medical treatment decision maker, the Medical Treatment Planning and Decisions Act sets out who can make a decision for you.

Your medical treatment decision maker cannot make any decisions in relation to treatment for mental illness if you are a patient under the Mental Health Act (that is, a person who is subject to compulsory treatment under the Mental Health Act).

However, a medical treatment decision maker can make decisions in relation to medical treatment, including treatment for mental illness, for a person who is not a patient under the Mental Health Act.

Support Person

If you have decision-making capacity to do so, you can appoint a support person who can support you to make, communicate and give effect to your medical treatment decisions.

Your support person can also represent your interests in relation to your medical treatment, including when you do not have decision-making capacity in relation to medical treatment decisions.

Electroconvulsive Therapy (ECT)

ECT is treatment for mental illness, which falls within the definition of medical treatment.

If you are not subject to compulsory treatment under the Mental Health Act, and have decision-making capacity, then you can consent to, or refuse, ECT.

If you do not have decision-making capacity to consent to, or refuse, the ECT, then the psychiatrist can make an application to the Mental Health Tribunal for an order for ECT to be performed.

The Mental Health Tribunal must make an order if satisfied as to all of the following:

- you do not have decision-making capacity to give informed consent
- there is no less restrictive way for you to be treated and
- you have an instructional directive giving informed consent to the ECT, or your medical treatment decision maker has given informed consent in writing.

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