



New South Wales

Mental Health Amendment (Consequential Amendments) Regulation 2015

under the

Mental Health Act 2007

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Mental Health Act 2007*.

PRU GOWARD, MP
Minister for Mental Health

Explanatory note

The object of this Regulation is to make the following amendments to the *Mental Health Regulation 2013* (some of which are consequential on the commencement of the *Mental Health Amendment (Statutory Review) Act 2014* which commences on 31 August 2015):

- (a) to require the medical superintendent of a mental health facility to ensure that if a medical practitioner or accredited person carries out an examination or observation of a person using an audio visual link at the facility, the dignity and privacy of the person is preserved to the greatest extent possible in the circumstances and the examination or observation is conducted in a private area,
- (b) to specify how a person who is not an involuntary patient but is otherwise detained at a mental health facility makes an appeal against a refusal to discharge the person,
- (c) to require 2 or more official visitors to visit a mental health facility only once every 3 months if the facility also operates as an emergency department in a hospital that does not have another mental health facility that treats patients on an in-patient basis,
- (d) other minor consequential amendments to prescribed forms and to reflect changes in defined terms.

This Regulation is made under the *Mental Health Act 2007*, including sections 19A (3), 27A (5), 44 (2), 51 (2) (c), 72 (5), 91 (3), 131, 194 and 196 (the general regulation-making power).

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1 Name of Regulation

This Regulation is the *Mental Health Amendment (Consequential Amendments) Regulation 2015*.

2 Commencement

This Regulation commences on 31 August 2015 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Mental Health Regulation 2013

[1] Part 2, Division 1, heading

Omit the heading. Insert instead:

Division 1 Examination of persons

[2] Clause 3A

Insert before clause 4:

3A Examination by audio visual link

For the purposes of sections 19A (3) and 27A (5) of the Act, if an audio visual link is being used at a mental health facility to enable a medical practitioner or accredited person to carry out an examination or observation under section 19 or 27A, the medical superintendent of that facility must take reasonable steps to ensure that:

- (a) any interference with the dignity and privacy of the person being examined or observed is kept to the minimum necessary in the circumstances, and
- (b) the examination or observation is conducted when the person being examined or observed, and the medical practitioner or accredited person, are in a private area.

[3] Clause 7 Appeal against refusal to discharge

Insert “or person detained at a mental health facility” after “involuntary patient” in clause 7 (1).

[4] Clause 7 (2)

Omit “a patient”.

Insert instead “an involuntary patient or a person detained at a mental health facility”.

[5] Clause 7 (2) (c)

Omit “patient, that the patient”.

Insert instead “involuntary patient or person detained, that the patient or person”.

[6] Clauses 8 (b) and 36 (2)

Omit “the primary carer” wherever occurring.

Insert instead “a designated carer, or the principal care provider”.

[7] Clause 18 Visits to mental health facilities

Omit “For”. Insert instead, “Subject to subclause (2), for”.

[8] Clause 18 (2)

Insert at the end of clause 18:

- (2) In the case of a mental health facility that also operates as an emergency department in a hospital:
 - (a) 2 or more official visitors must visit the mental health facility once a month if another mental health facility is located in the hospital and that facility treats patients on an in-patient basis, and

(b) in all other cases, 2 or more official visitors must visit the mental health facility once every 3 months.

[9] Clause 42 Term of nominations of designated carers

Omit “primary carer”. Insert instead “designated carer”.

[10] Schedule 1 Forms

Insert “/a person detained” after “involuntary patient” wherever occurring in Forms 3 and 4.

[11] Schedule 1, Form 5

Omit “If you are an involuntary patient, the treatment can only be carried out without your consent after a full hearing before the Mental Health Review Tribunal.” from the matter under the heading **Consent to treatment**.

[12] Schedule 1, Form 5

Insert the following after the matter under the heading **Consent to treatment**:

Persons under 16 and involuntary patients

If you are an involuntary patient who does not consent to the treatment, or if you are a person under the age of 16 years, the treatment can only be carried out after a full hearing before the Mental Health Review Tribunal.

[13] Schedule 1, Form 9

Insert after paragraph (b) in clause 2:

(b1) the patient’s sex,

[14] Schedule 1, Form 9

Omit “by a primary carer” from clause 2 (f) (v).

Insert instead “by the principal care provider or a designated carer”.