THE UNIVERSITY of ADELAIDE

South Australian Law Reform Institute

Review of the *Mental Health Act 2009* (SA)

Fact Sheet 4 – Community Treatment Orders

What is a Community Treatment Order?

A Community Treatment Order ('CTO') is a legal order which requires a person living with a mental illness to receive treatment without consent, at a particular place and at regular intervals.[1] There are two levels of CTOs. For both types, a person must have a mental illness, be at risk to themselves or others and have impaired decision-making capacity. However, they are safe to remain living at home or in the community. Much like an Inpatient Treatment Order, less restrictive treatment/s must first be considered.

- **Level 1 CTO:** made by a medical practitioner or mental health professional, reviewed within 24 hours and cannot be longer than 42 days.

- **Level 2 CTO:** can only be ordered by the South Australian Civil and Administrative Tribunal ('SACAT'). An application may be made by the Public Advocate, a medical practitioner, mental health clinician, guardian, carer, relative, friend, medical agent or other interested party. This order can last up to 12 months for an adult or 6 months for a child (18 years and under). A decision to make this order may be re-considered by SACAT through an internal review.[2]

Current issues

There are two key issues:

1. The number of active CTOs has been rising, with the total number increasing from 2234 (17.9%) in 2019-20 to 2471 (19.8%) in 2020-21.[3] Suggestions to reduce the number of active CTOs are needed. In particular, the use of CTOs among Aboriginal people and culturally and linguistically diverse people should also be reviewed.
2. Under the *Mental Health Act 2009* (SA) ('*MHA*'), if a person fails to receive their treatment, they may be transported, against their will, to a treatment centre (a hospital). If this occurs, the law does not give interested parties the power to use reasonable force in order to transport the person to a centre. This raises issues relating to restrictive practice, control powers and human rights.

Consultation Questions

1. Should the law and practice be re-framed to limit or reduce the number of CTOs? Why or why not?
2. Should the *MHA* be changed to include a power to use reasonable force in cases involving non-compliance with a CTO?

[1] *Mental Health Act 2009* (SA) Pt 4; see also SA Health, 'Community Treatment Order rights' (Web Page) <https://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/conditions/legal+matters/mental+health+statement+of+rights/community+treatment+order+rights>.

[2] See South Australian Civil and Administrative Tribunal, 'Community treatment orders and who can apply' (Web Page) <https://www.sacat.sa.gov.au/get-started/mental-health/community-treatment-orders-and-who-can-apply>.

[3] See Office of the Chief Psychiatrist South Australia, *Annual Report of the Chief Psychiatrist of South Australia 2020-21* (Report, 18 November 2021) 31.

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