THE UNIVERSITY of ADELAIDE

South Australian Law Reform Institute

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

Fact Sheet 3 – Inpatient Treatment Orders

What is an Inpatient Treatment Order?

An Inpatient Treatment Order ('ITO') is a legal order which requires a person with a mental illness to receive treatment without their consent.[1] There are three levels of ITOs. For all ITOs, a person must lack decision-making capacity (see Fact Sheet 2) and be at risk of harming themselves or others.[2] An ITO is a last resort, which means there are no less restrictive options available to provide treatment.

- **Level 1 ITO:** made by a medical practitioner or mental health professional. Must be no longer than 7 days, requiring a review 24 hours after the order is made to determine whether it remains necessary.

- **Level 2 ITO:** made by a psychiatrist or medical practitioner. This order is made if the treating medical practitioner concludes the person requires further treatment in a treatment centre, such as a hospital. This order can last for up to 42 days and may be further extended.

- **Level 3 ITO:** can only be ordered by the South Australian Civil and Administrative Tribunal ('SACAT'), by application from the Public Advocate, a Director or an authorised employee of an approved treatment centre.[3] This order can last up to 12 months and may be reviewed through an appeal.

Current issues

There are three key issues:

1. An ITO impacts on the liberty of a person, in particular, the power to detain and use force. As such, it raises human rights considerations. These must be balanced with the welfare of the individual and the community.
2. Whether the care and control powers under the *MHA* should be changed to better protect the human rights of a person who lacks capacity.
3. The current definition of 'treatment' under the *MHA* arguably excludes other health issues resulting from a mental illness. For example, treatment for physical health issues, such as diabetes caused by psychiatric medication, is not covered under the law. These health issues could be treated under an ITO if the definition was expanded.

Consultation Questions

1. Should the definition of 'treatment' be expanded to include an assessment or other medical/health issues?
2. Should the *MHA* allow powers to detain and use force? If so, who should be allowed to detain and use force?

[1] *Mental Health Act 2009* (SA) Div 2; see also SA Health, 'Inpatient 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/inpatient+treatment+order+rights>.
[2] See *Mental Health Act 2009* (SA) Pt 5.
[3] See South Australian Civil and Administrative Tribunal, 'Inpatient treatment orders and who can apply' (Web Page) <https://www.sacat.sa.gov.au/get-started/mental-health/inpatient-treatment-orders-and-who-can-apply>.

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