



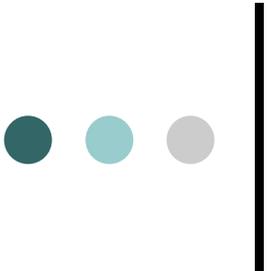
The role of the MHA

Iris Reuvecamp
“This is not my home”
27 September 2016



Overview

- When you can no longer decide – who decides then?
- What we are talking about today
- The MHA – a closer look



When you can no longer decide – who decides then?

- You – by way of valid advance directive; or
- Someone you have appointed to act on your behalf – an Enduring Power of Attorney; or
- Those providing care - right 7(4) of the Code of Rights; or
- Persons appointed by the court by way of orders under the PPPR Act



What we are talking about today



Where there is no advance directive and no one lawfully entitled to act on a person's behalf



Right 7(4)



Right 7(4)

- Under Right 7(4) services may be provided if:
 - A consumer who is not competent to make an informed choice AND
 - There is no person entitled to consent AND:
 - Services are in the **best interests** of the consumer; and
 - Reasonable steps to ascertain **consumer's views**; and
 - **Views of consumer or other suitable person** taken into account

HC HEALTH & DISABILITY COMMISSIONER
TE TOIHAU HAUJORA, HAUĀTANGA

Your Rights when receiving a Health or Disability Service

- **Respect**
You should be treated with respect. This includes respect for your culture, values and beliefs, as well as your right to personal privacy.
- **Fair Treatment**
No one should discriminate against you, pressure you into something you do not want or take advantage of you in any way.
- **Dignity and Independence**
Services should support you to live a dignified, independent life.
- **Proper Standards**
You have the right to be treated with care and skill, and to receive services that reflect your needs. All those involved in your care should work together for you.
- **Communication**
You have the right to be listened to, understood and receive information in whatever way you need. When it is necessary and practicable, an interpreter should be available.
- **Information**
You have the right to have your condition explained and to be told what your choices are. This includes how long you may have to wait, an estimate of any costs, and likely benefits and side effects. You can ask any questions to help you to be fully informed.
- **It's Your Decision**
It is up to you to decide. You can say no or change your mind at any time.
- **Support**
You have the right to have someone with you to give you support in most circumstances.
- **Teaching and Research**
All these rights also apply when taking part in teaching and research.
- **Complaints**
It is OK to complain – your complaints help improve service. It must be easy for you to make a complaint, and it should not have an adverse effect on the way you are treated.

If you need help, ask the person or organisation providing the service. You can contact the local advocacy service on 0800 555 050 or the Health and Disability Commissioner on 0800 11 22 33 (TTY).

Limits of right 7(4)

- Uncertainty about capacity
- There is an EPOA/ welfare guardian
- Person is violently opposed to what is proposed
- Differing views amongst staff and/or family

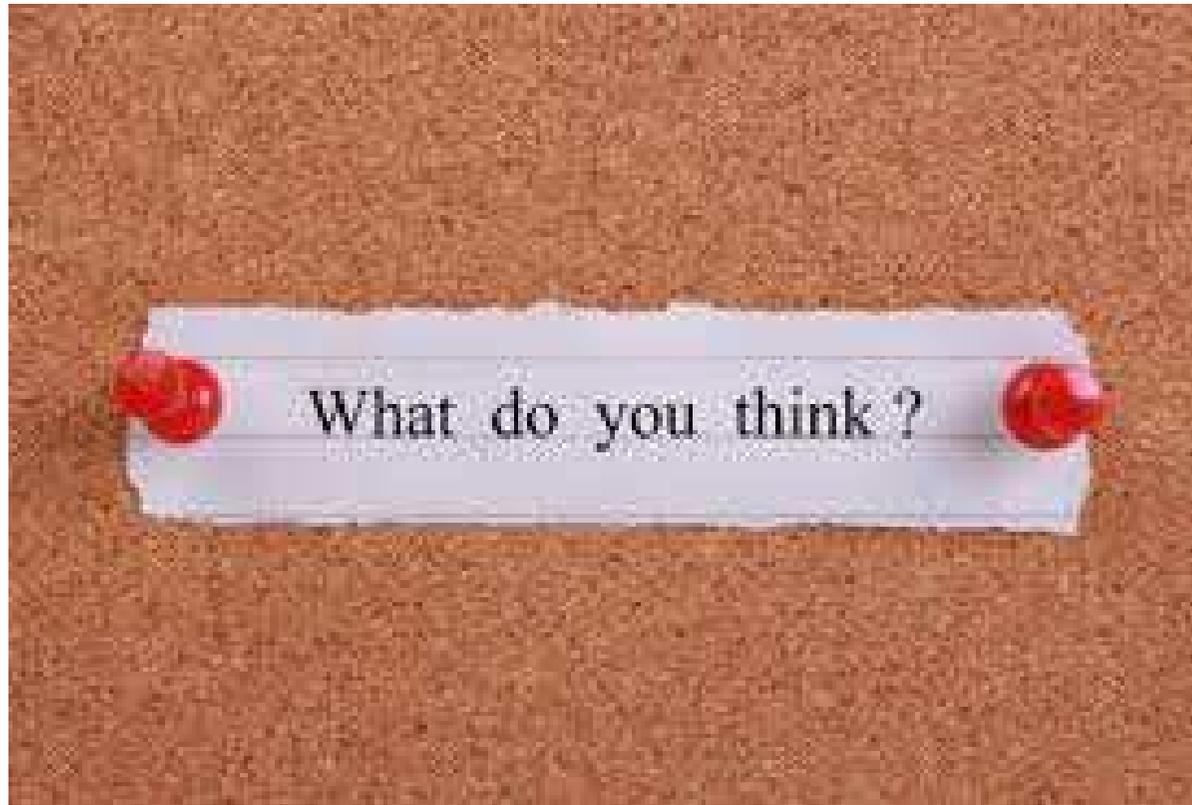


What about long-term detention?

- Right 7(4) broad enough to extend to long-term detention
- But – lack of appeal process/mechanism to ensure detention appropriate/protection of rights



- ● ● | So should we use it for long-term detention?





In practice....

- Varies across the country
- Some NASCs/aged care providers require EPOA/Welfare Guardian
- Probably 1000s of people who lack capacity without EPOA/Welfare Guardian who are detained (whether in residential care or community)





Policy



- As a matter of policy, could require EPOA/Welfare Guardian/personal orders, but problematic:
 - Whose responsibility (i.e. who applies)?
 - Cost (of appointing EPOA/seeking court orders)
 - Delay (Family court – up to 26 weeks, maybe more)

What about the MHA – where does it fit in?

Mental Health (Compulsory Assessment and Treatment) Act 1992

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Contents

Previous section

Next section

Tag section

Remove

Previous hit

Next hit

Reprint as at 12 December 2014

Mental Health (Compulsory Assessment and Treatment) Act 1992

Public Act 1992 No 46

Date of assent 15 June 1992

Commencement see section 1(2)

Note

Changes authorised by [subpart 2](#) of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Health.



Frequency of MHA use for dementia





Compulsory assessment and treatment

- If meet the definition of mentally disordered, can be subject to compulsory assessment and treatment under the MHA



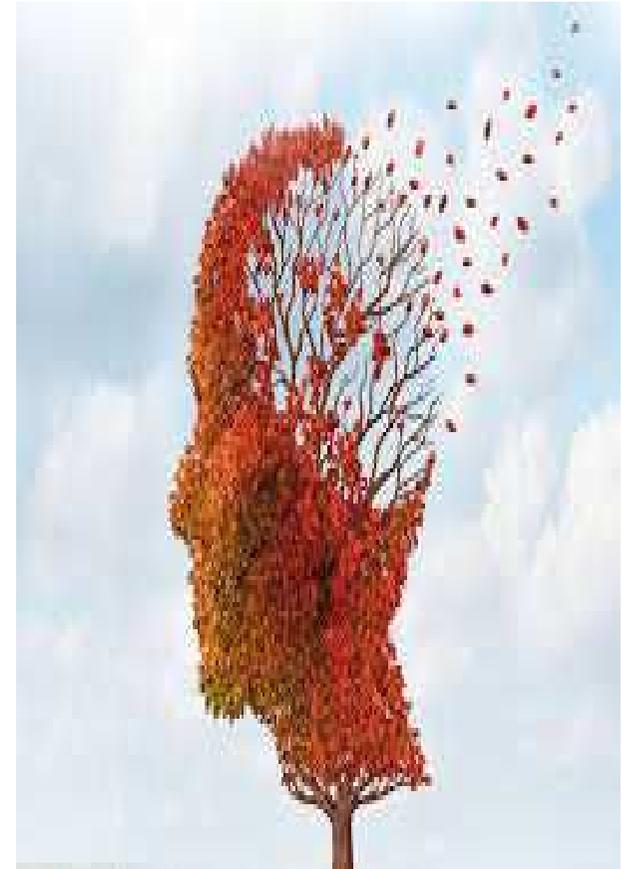
Mental Disorder

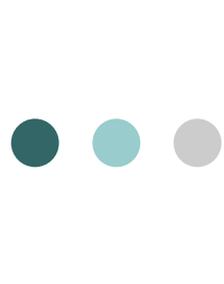
- `Mental disorder' in relation to any person, means an abnormal state of mind (whether of a continuous or an intermittent nature), characterised by delusions, or by disorders of mood or perception of volition or cognition, of such a degree that it –
 - (a) poses a serious danger to the health or safety of a person or of others; or
 - (b) Seriously diminishes the capacity of that person to take care of himself or herself



What about dementia?

- If advanced, is likely to fall within the ambit of an abnormal state of mind characterised by disorder of cognition, and may well meet the risk aspect of the test, depending on the circumstances





Compulsory Treatment Orders

- Two types:
 - Community treatment order (to be preferred unless the court is satisfied the person cannot be treated as an outpatient)
 - Inpatient order (allowing detention in a specified hospital)



A couple of issues



- If subject to a community treatment order, this cannot require you to live in a particular place (just present to a specified place for treatment)
- If subject to an inpatient order, the patient needs to be an inpatient in a hospital certified to provide hospital mental health care (most residential care facilities are not)



Possible solution



- An inpatient can be placed on leave for up to 3 months, which can in certain circumstances, be extended to 6 months.
- Leave is on terms and conditions of responsible clinician. So could be that a patient resides at a residential care facility.



Benefits



- Person is safe and in an appropriate environment
- Person is not blocking an acute hospital bed
- Person has the benefit of the protective mechanisms of the MHA:
 - Review and appeal mechanisms
 - Patient rights
 - District Inspectors



But....

- It causes issues from a funding perspective, as the DHB will be paying for the patient's care out of its mental health budget rather than aged residential care





In conclusion

- The MHA is available if it isn't appropriate to rely on right 7(4), and some urgency is required
- Should probably only be used as an interim measure pending court orders
- Is unlikely to be a long-term solution within the context of the current legal and regulatory framework

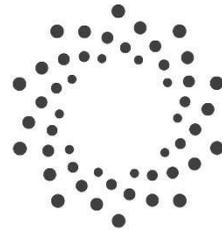


Questions?





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