

Western Australia

Mental Health Act 1996

Mental Health Regulations 1997

As at 23 Jul 2011

Version 01-c0-03

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Mental Health Regulations 1997

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Mental Health Regulations 1997

1. Citation

These regulations may be cited as the *Mental Health Regulations 1997*¹.

2. Commencement

These regulations come into operation on the day on which the *Mental Health Act 1996* comes into operation¹.

3. Interpretation

In these regulations —
section means section of the Act.

4. Authorised mental health practitioners — s. 20(4)(a)

- (1) The successful completion by a mental health practitioner, other than a nurse, of a course of training approved by the Chief Psychiatrist is to be regarded by the Chief Psychiatrist as appropriate training for the purposes of section 20(1)(a).
- (2) The chief psychiatrist is to regard the qualifications, training, and experience of a mental health practitioner who is a nurse as appropriate for the purposes of section 20(1)(a) if the nurse —
 - (a) is a person whose name is entered on Division 1 of the Register of Nurses kept under the *Health Practitioner Regulation National Law (Western Australia)* as a registered nurse; and

(b) has successfully completed a course of training approved by the Chief Psychiatrist.

(3) In this regulation —

nurse means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the nursing and midwifery profession.

[Regulation 4 amended in Gazette 22 Jul 2011 p. 3016.]

5. Notifications to be given by authorised mental health practitioners — s. 20(4)(c)

(1) For the purposes of section 20(4)(c), an authorised mental health practitioner is to give notice to the Chief Psychiatrist as to the matters referred to in subregulation (2) which have occurred within the 6 months preceding each 30 June and 31 December, beginning with the 30 June 1998, within 14 days after those dates.

(2) The matters as to which notice is to be given under subregulation (1) are —

(a) the number of people that the authorised mental health practitioner has personally examined, as required under section 31, for the purpose of forming an opinion as to whether it is suspected that the person should be made an involuntary patient, and the number of such people referred for examination by a psychiatrist under section 29 as a result of such an examination;

(b) the number of people that the authorised mental health practitioner has examined for the purpose of determining whether to give a written opinion under section 63 to the effect that the person should not continue to be detained as an involuntary patient, and the number of such opinions given;

(c) the number of transport orders made under section 34 by the authorised mental health practitioner; and

- (d) unusual events experienced by the authorised mental health practitioner and a brief case history of each event.

6. Grounds on which a person's authorisation as a mental health practitioner may be revoked — s. 20(4)(d)

For the purposes of section 20(4)(d), the grounds on which a person's designation as an authorised mental health practitioner may be revoked are —

- (a) that the person no longer meets the criteria to be a mental health practitioner set out in section 19(1);
- (b) that the person has requested in writing that the person's designation be revoked; or
- (c) that the Chief Psychiatrist, after due investigation, is of the opinion that the person is no longer able or fit to perform the functions vested in an authorised mental health practitioner by sections 29 and 63.

7. Where a public hospital ceases to be an authorised hospital — s. 21

- (1) If a public hospital ceases to be an authorised hospital because an order under section 21(1) is revoked, every person received into, or admitted as an involuntary patient to, the authorised hospital is to be transferred to another authorised hospital in accordance with this regulation.
- (2) Immediately on becoming aware that a public hospital is to cease to be an authorised hospital, the Chief Psychiatrist, after consulting the person in charge of that hospital and any other authorised hospital that may have facilities sufficient or appropriate for accommodating and treating the people that are to be transferred, is to give a written direction as to the transfer.

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- (3) A written direction is to contain such directions as to the transfer arrangements and the medical care and welfare of the people to be transferred as the Chief Psychiatrist considers necessary.
- (4) A written direction is to be directed to the person in charge of the public hospital which is to cease to be an authorised hospital and is to be given to that person, and a copy of the direction is to be given to —
 - (a) the person in charge of any other authorised hospital specified in the direction;
 - (b) the Registrar;
 - (c) the executive officer of the Council of Official Visitors; and
 - (d) the Secretary of the Mentally Impaired Defendants Review Board, if the Chief Psychiatrist considers it necessary.
- (5) On receipt of a written direction, the person in charge of the public hospital which is to cease to be an authorised hospital is to notify in writing each person who is to be transferred to another authorised hospital of the transfer arrangements affecting that person.
- (6) Each person to whom a written direction is directed, or who is in charge of an authorised hospital specified in the direction, is to ensure that the direction is complied with insofar as it applies to that person or the hospital of which the person is in charge.

8. Details of involuntary patients to be kept by Registrar — s. 24(a)

The following particulars are to be kept by the Registrar in respect of every involuntary patient —

- (a) the name, address and date of birth of the patient;
- (b) the details of any orders made under sections 43(2)(a), 49(3)(a), 50, 70(1) or 78 in respect of the patient;

- (c) the details of any community treatment order made, or revoked, in respect of the patient, and any variation, extension or breach of that order;
- (d) any periods where the patient has been absent without leave;
- (e) details of any reports under section 115(b), 120(d) and 124 in respect of the patient;
- (f) details of any periods of leave of absence granted to the patient;
- (g) the date that the patient is released from detention in an authorised hospital or ceases to be an involuntary patient;
- (h) if the patient dies, the date and cause of death; and
- (i) any other details in respect of the patient that the Board requires the Registrar to keep.

9. Delegation to Registrar — s. 25

The Board may delegate to the Registrar under section 25 any function of the Board under the following sections —

- (a) section 142;
- (b) section 143(a) or (b);
- (c) section 146;
- (d) section 203(2).

10. Apprehension of person absent without leave — s. 58(1)(a) and (b)

A mental health practitioner is a person qualified as prescribed for the purposes of section 58(1)(a) and (b).

11. Particulars to be included in authorisation to keep patient in seclusion — s. 119(2)

For the purposes of section 119(2), the following particulars are to be included in an authorisation to keep a patient in seclusion,

in addition to particulars of the period for which the authorisation is given —

- (a) the name and qualifications of the senior mental health practitioner or medical practitioner who gave the authorisation;
- (b) the date and time that the authorisation was given;
- (c) the reason the authorisation was given, having regard to section 119(1);
- (d) particulars of any special observations made in respect of the patient at the time of seclusion and any directions issued by a medical practitioner or mental health practitioner regarding the clinical care of the patient while in seclusion; and
- (e) where the authorisation is given by a senior mental health practitioner, details of the emergency.

12. Records to be kept with respect to authorisation to keep patient in seclusion — s. 119(4)

For the purposes of section 119(4), the treating psychiatrist of a patient in respect of which authorisation is given to keep the patient in seclusion, is to keep the following records as part of the patient's case notes —

- (a) the original of the authorisation;
- (b) where the authorisation is given by a senior mental health practitioner —
 - (i) the name and qualifications of the medical practitioner notified under section 119(3) and the time of that notification;
 - (ii) whether the medical practitioner notified saw the patient, and if so, the date and time the patient was seen; and

- (iii) whether the medical practitioner varied or revoked the authorisation, and if so, the reasons for this, and if varied, the details of the variation;
- (c) the name and qualifications of the treating psychiatrist;
- (d) the date and time that the treating psychiatrist was notified of the authorisation;
- (e) the date, time and results of each medical examination of the patient in the 24 hours following seclusion and the name and qualifications of each examining medical practitioner;
- (f) details of any complications that have arisen in the patient's case as a result, or suspected result, of the seclusion;
- (g) the dates, times and results of the monitoring carried out under section 120(c); and
- (h) a copy of the report made to the Board under section 120(d).

13. Observation of patient in seclusion — s. 120(b)

For the purposes of section 120(b), the treating psychiatrist of a patient in seclusion is to ensure that the patient is observed by a mental health practitioner every 15 minutes while in seclusion.

14. Particulars to be included in authorisation to use mechanical bodily restraint on a patient — s. 123(2)

For the purposes of section 123(2), the following particulars are to be included in an authorisation to use mechanical bodily restraint on a patient, in addition to particulars of the period for which the authorisation is given —

- (a) the name and qualifications of the senior mental health practitioner or medical practitioner who gave the authorisation;
- (b) the date and time that the authorisation was given;

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- (c) the reason the authorisation was given, having regard to section 123(1) and the type of restraint used;
- (d) particulars of any special observations made in respect of the patient at the time of restraint and any directions issued by a medical practitioner or mental health practitioner regarding the clinical care of the patient while under restraint;
- (e) where the authorisation is given by a senior mental health practitioner, details of the emergency.

15. Records to be kept with respect to authorisation to use mechanical bodily restraint — s. 123(4)

For the purposes of section 123(4), the treating psychiatrist of a patient in respect of which the use of mechanical bodily restraint is authorised, is to keep the following records in a separate part of the patient's case notes entitled "Record of Restraint under Section 123 of the Act" —

- (a) the original of the authorisation;
- (b) where the authorisation is given by a senior mental health practitioner —
 - (i) the name and qualifications of the medical practitioner notified under section 123(3) and the time of that notification;
 - (ii) whether the medical practitioner notified saw the patient, and if so, the date and time the patient was seen; and
 - (iii) whether the medical practitioner varied or revoked the authorisation, and if so, the reasons for this, and if varied, the details of the variation;
- (c) the name and qualifications of the treating psychiatrist;
- (d) the date and time that the treating psychiatrist was notified of the authorisation;

- (e) the date, time and results of each medical examination of the patient in the 24 hours following restraint and the name and qualifications of each examining medical practitioner;
- (f) details of any complications that have arisen in the patient's case as a result, or suspected result, of the restraint;
- (g) the dates, times and results of the observations to be carried out under regulation 14; and
- (h) a copy of the report made to the Board under section 124.

16. Special duties where patient under mechanical bodily restraint

While a patient is under mechanical bodily restraint the treating psychiatrist is to ensure that —

- (a) a mental health practitioner is in physical attendance with the patient;
- (b) a medical practitioner is in physical attendance with the patient for the first 15 minutes that the patient is under restraint; and
- (c) after the first 15 minutes that the patient is under restraint, a medical practitioner monitors the patient every 30 minutes.

17. Register of seclusions and restraints to be kept

- (1) The psychiatrist in charge of the clinical psychiatric services of each authorised hospital is to —
 - (a) ensure that there is kept and maintained a register containing the clinical details of every seclusion authorised under section 119 and every restraint authorised under section 123 in respect of a patient at the hospital; and

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- (b) monitor the use of the powers contained in Divisions 8 and 9 of Part 5 of the Act in respect of patients at the hospital.
- (2) The psychiatrist in charge of the clinical psychiatric services of an authorised hospital is to provide a copy of the register of seclusions and restraints kept under subregulation (1) to the Chief Psychiatrist within 14 days of being requested in writing to do so by the Chief Psychiatrist.

18. Explanation of rights — s. 156(1)

A person referred to in section 156(1) is to receive an explanation of his or her rights and entitlements under the Act, as is relevant having regard to the particular situation of the person, with respect to —

- (a) legal status;
- (b) detention;
- (c) examination;
- (d) the right to an examination or interview with a psychiatrist;
- (e) receiving copies of, or inspecting, an order made concerning the person or any other relevant document;
- (f) applying for a review;
- (g) access to an official visitor or panel;
- (h) the making of a complaint;
- (i) contact with people outside the hospital whether by receiving visitors, by telephone or by correspondence by post or otherwise;
- (j) storage and use of personal possessions at hospital; and
- (k) applying to the State Administrative Tribunal for a review of a decision or order of the Mental Health Review Board.

[Regulation 18 amended in Gazette 30 Dec 2004 p. 6940.]

19. Other information to be included in records — s. 204(3)(e)

In addition to the information referred to in section 204(3), the records to be kept in respect of each patient admitted to an authorised hospital is to include the following information —

- (a) whether the patient is an involuntary patient, a mentally impaired defendant or has been voluntarily admitted;
- (b) the date the patient was received into, or admitted to, the authorised hospital;
- (c) the date the patient was discharged from the hospital and whether the person was subject to a community treatment order at that date;
- (d) particulars of any reports and notices given to the Board relating to the patient;
- (e) particulars of any records required to be made under section 158(2);
- (f) particulars of any notices given under section 201 and the outcome of any such notice; and
- (g) particulars of any periods of leave of absence and absence without leave.

20. Disqualifying interest of official visitor where shares held — Schedule 3, clause 2(e)

- (1) The amount prescribed for the purposes of Schedule 3, clause 2(e)(i) of the Act is \$2 000.
- (2) The percentage prescribed for the purposes of Schedule 3, clause 2(e)(ii) of the Act is 1%.

Notes

- ¹ This is a compilation of the *Mental Health Regulations 1997* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Citation	Gazettal	Commencement
<i>Mental Health Regulations 1997</i>	7 Nov 1997 p. 6107-17	13 Nov 1997 (see r. 2)
Reprint 1: The Mental Health Regulations 1997 as at 23 Apr 2004		
<i>Mental Health Amendment Regulations 2004</i>	30 Dec 2004 p. 6940	1 Jan 2005 (see r. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Mental Health Amendment Regulations 2011</i>	22 Jul 2011 p. 3015-16	r. 1 and 2: 22 Jul 2011 (see r. 2(a)); Regulations other than r. 1 and 2: 23 Jul 2011 (see r. 2(b))