

Mental Health Act, 2014 (Western Australia)

Sections focused on Carers

This information sheet is designed to support health professionals navigate carer specific information from the Mental Health Act, 2014 (WA). [Click here to download the entire Mental Health Act, 2014 for Western Australia.](#) Information included below are direct quotes from the Mental Health Act and include page numbers where you can find further information. The information was sourced via the Private Mental Health Consumer Carer Network (Australia) Limited.

Carers:

- (1) *“For this Act, a carer of a person is a person who is that person’s carer under the Carers Recognition Act 2004 section 5.*
- (2) *It is recognised that very often, although not invariably, a person’s carer is a family member.*
- (3) *It is also recognised that, even though a family member is a person’s carer —*
 - (a) *the person may not identify the family member as his or her carer; or*
 - (b) *the family member may not identify himself or herself as the person’s carer” (p. 197).*

Objects of the Act

“The objects of this Act are as follows —

- (b) *to recognise the role of carers and families in the treatment, care and support of people who have a mental illness” (p. 15).*

Charter of Mental Health Care Principles

“Principle 14: Involvement of other people A mental health service must take a collaborative approach to decision making, including respecting and facilitating the right of people experiencing mental illness to involve their family members, carers and other personal support persons in planning, undertaking, evaluating and improving their treatment, care and support” (p. 429).

“Principle 15: Accountability and improvement A mental health service must be accountable, committed to continuous improvement and open to solving problems in partnership with all people involved in the treatment, care and support of people experiencing mental illness, including their family members, carers and other personal and professional support persons” (p.429).

Acknowledgment of and respect for role of carers and close family members

“The role of carers and close family members in the provision of treatment, care and support to a person who has a mental illness should be acknowledged and respected” (p. 198).

More than one carer or close family member

- (1) *“Without limiting a requirement under this Act relating to any carer of a person, it is sufficient for compliance with the requirement if there is compliance in respect of at least one carer.*
- (2) *Without limiting a requirement under this Act relating to any close family member of a person, it is sufficient for compliance with the requirement if there is compliance in respect of at least one close family member.*
- (3) *This section does not apply in relation to a requirement under Part 9 Division 2 or section 446 or 447 in respect of a carer or close family member” (p. 198).*

Rights of carers and close family members

(1) *Any carer or close family member of a patient is entitled —*

(a) *subject to this Division, to be provided with information relating to the patient’s treatment and care, including information about these matters —*

(i) *the mental illness for which the patient is being provided with treatment or care;*

(ii) *if the patient is an involuntary patient — the grounds on which, and the provision of this Act under which, the involuntary treatment order was made;*

- (iii) the treatment and care proposed to be provided to the patient and any other options for the patient's treatment and care that are reasonably available;
 - (iv) the treatment provided to the patient and the patient's response to that treatment;
 - (v) the seclusion of, or use of bodily restraint on, the patient;
 - (vi) the services available to meet the patient's needs; and
 - (b) subject to this Division, to be involved in matters relating to the patient's treatment and care, including these matters
 - (i) the consideration of the options that are reasonably available for the patient's treatment and care; and
 - (ii) the provision of support to the patient; and
 - (iii) the preparation and review of any treatment, support and discharge plan for the patient; and
 - (c) to be provided with information about the patient's rights under this Act and how those rights can be accessed and exercised; and
 - (d) to be provided with information about the rights of the carer or close family member under this Act and how those rights can be accessed and exercised.
- (2) A carer or close family member of a patient may indicate the extent to which the carer or close family member wants to be provided with the information referred to in subsection (1)(a), (c) or (d) or to be involved in the matters referred to in subsection (1)(b).
- (3) To avoid doubt, a carer or close family member of a patient is not authorised to apply on the patient's behalf for admission or discharge by a mental health service, or make a treatment decision about the provision of treatment to the patient, unless the carer or close family member is authorised to do so in another capacity" (p. 199-200).

Identifying carer or close family member - when being admitted or received

- (1) "This section applies when a person is being admitted by, or is being received into, a mental health service for the purpose of providing the person with treatment or care.
- (2) The person in charge of the mental health service must ensure that the person is asked —
- (a) whether or not the person has a carer; and
 - (b) whether or not the person has a close family member; and
 - (c) if the person has a carer or close family member, whether or not the person consents to the carer or close family member being —
 - (i) provided with the information referred to in section 285(1)(a) in connection with the provision of that treatment or care; and
 - (ii) involved in the matters referred to in section 285(1)(b) while the person is being provided with that treatment or care.
- (3) The person in charge of the mental health service must ensure that a record of the person's answers to the questions asked under subsection (2) is filed" (p. 206-207).

Matters relevant to decision about person's best interests

- (1) "This section applies whenever a person or body is required under this Act to decide what is or is not in the best interests of a person.
- (2) The person or body making the decision must have regard to these things —
- (b) the views of each of these people —
 - (iii) if the person has a nominated person — the nominated person;
 - (iv) if the person has a carer — the carer;
 - (v) if the person has a close family member — the close family member" (p. 13).

Voluntary patient with capacity to consent

- "(1) This section applies in relation to a voluntary patient who has the capacity to consent to a carer or close family member of the patient being provided with the information referred to in section 285(1)(a), or being involved in the matters referred to in section 285(1)(b), relating to his or her treatment and care.
- (2) The carer or close family member is entitled to be provided with that information, or to be involved in those matters, with the voluntary patient's consent" (p. 201).

Involuntary patient or mentally impaired accused with capacity to consent

- "(1) This section applies in relation to a patient —
- (a) who is —
 - (i) an involuntary patient; or
 - (ii) a mentally impaired accused required under the MIA Act to be detained at an authorised hospital; and
 - (b) who has the capacity to consent to a carer or close family member of the patient being provided with the information referred to in section 285(1)(a), or being involved in the matters referred to in section 285(1)(b), relating to his or her treatment and care.
- (2) The carer or close family member is entitled to be provided with that information, or to be involved in those matters, unless —
- (a) the patient has refused to consent to the carer or close family member being provided with that information or being involved in those matters; and
 - (b) the patient's psychiatrist considers that the refusal is reasonable" (p. 201-202).

Involuntary patient or mentally impaired accused with no capacity to consent

- "(1) This section applies in relation to a patient —
- (a) who is —
 - (i) an involuntary patient; or
 - (ii) a mentally impaired accused required under the MIA Act to be detained at an authorised hospital; and
 - (b) who does not have the capacity to consent to a carer or close family member of the patient being provided with the information referred to in section 285(1)(a), or being involved in the matters referred to in section 285(1)(b), relating to his or her treatment and care.
- (2) The carer or close family member is entitled, subject to section 292, to be provided with that information, or to be involved in those matters.

Voluntary inpatient admitted by authorised hospital

- (5) "The person in charge of the voluntary inpatient's ward must ensure that the inpatient has the opportunity and the means to contact any carer, close family member or other personal support person of the inpatient, a health professional who is currently providing the inpatient with treatment and the Chief Mental Health Advocate —
- (a) as soon as practicable after the order is made; and
 - (b) at all reasonable times while the voluntary inpatient is detained under the order" (p. 31).

Leave of absence from detention at hospital under inpatient treatment order

- "(2) The psychiatrist cannot make the order unless the psychiatrist has consulted each of these people about the matters specified in subsection (3) —
- (a) if the involuntary inpatient has an enduring guardian or guardian — the enduring guardian or guardian; (b) if the involuntary inpatient is a child — the child's parent or guardian;
 - (c) if the involuntary inpatient has a nominated person — the nominated person unless the nominated person is not entitled, for the reason referred to in section 269(1), to be consulted;
 - (d) if the involuntary inpatient has a carer — the carer unless the carer is not entitled, for the reason referred to in section 288(2) or 292(1), to be consulted;
 - (e) if the involuntary inpatient has a close family member — the close family member unless the close family member is not entitled, for the reason referred to in section 288(2) or 292(1), to be consulted.
- (3) For subsection (2), these matters are specified —
- (a) whether or not to make the order; and
 - (b) what period and conditions would be appropriate to specify in the order if it were to be made" (p. 74).

Notification of carers, close family members and other personal support persons

“Right of any carer, close family member or other personal support person to be notified

- (1) Any carer, close family member or other personal support person of a person is entitled to be notified, as soon as practicable, that a notifiable event has occurred in respect of the person.
- (2) However, the entitlement of a carer, close family member or other personal support person to be notified under subsection (1) is subject to section 142” (p. 101).

“Person responsible required to notify any carer, close family member or other personal support person

- (1) The person responsible under this Part for notification of a notifiable event must ensure that, as soon as practicable after the event occurs in respect of a person, any carer, close family member or other personal support person of the person is notified of the event.
- (2) However, the person responsible is not required to notify a carer, close family member or other personal support person of a notifiable event if the carer, close family member or other personal support person is not entitled, for a reason referred to in section 142(1) or (2), to be notified of the event” (p. 101-102).

Reasonable efforts to notify carer, close family member or other personal support person

- (1) “Without limiting the requirement under section 140(1), the requirement is taken to have been complied with if the person responsible for notification ensures that reasonable efforts to notify any carer, close family member or other personal support person of the notifiable event continue to be made until the first of these things occurs —
 - (a) at least one carer, close family member or other personal support person is notified of the notifiable event; or
 - (b) it is reasonable for the person responsible to conclude that no carer, close family member or other personal support person can be notified of the notifiable event.
- (2) The person responsible must ensure that one of the following is filed —
 - (a) a record of when and how any carer, close family member or other personal support person was notified under section 140(1) of the notifiable event;
 - (b) if no carer, close family member or other personal support person has been notified under section 140(1) of the notifiable event — a record of the reasons for that and any efforts made to do so” (p. 102).

Notification not in person’s best interests

- (1) “A carer, close family member or other personal support person is not entitled to be notified under section 140(1) of the making of an order under section 28(1) or (2) for the detention or further detention of a person, or the making of a transport order under section 29(1) in respect of a person, if the medical practitioner or authorised mental health practitioner who makes the order reasonably believes that it is not in the best interests of the person for the carer, close family member or other personal support person to be notified of the making of the order.
- (2) A carer, close family member or other personal support person is not entitled to be notified under section 140(1) of any other notifiable event that occurs in respect of a person if a psychiatrist believes that it is not in the best interests of the person for the carer, close family member or other personal support person to be notified of the event.
- (3) A practitioner or psychiatrist who decides under subsection (1) or (2) that a carer, close family member or other personal support person is not entitled to be notified of a notifiable event must, as soon as practicable —
 - (a) file a record of the decision and the reasons for it; and
 - (b) give a copy to the Chief Mental Health Advocate” (p. 102-103).

Advising carer, close family member or other personal support person of decision

- (1) “A practitioner or psychiatrist who decides under section 142 that a carer, close family member or other personal support person is not entitled to be notified of a notifiable event must, if the carer, close family member or other personal support person requests to be notified of the event —
 - (a) advise the carer, close family member or other personal support person of the decision and the reasons for it; and
 - (b) file a record of the advice and give a copy to the person in respect of whom the notifiable event occurs
- (2) A carer, close family member or other personal support person to whom advice is provided orally under subsection (1)

(a) may request the practitioner or psychiatrist who provided the advice to confirm the advice in writing.

(3) The practitioner or psychiatrist must —

(a) comply with the request; and

(b) file a copy of the confirmation and give another copy to the person in respect of whom the notifiable event occurs” (p. 103-104).

Revocation of decision

- (1) “A practitioner or psychiatrist may revoke a decision made under section 142 that a carer, close family member or other personal support person is not entitled to be notified of a notifiable event if satisfied that the reasons for making the decision no longer apply
- (2) The practitioner or psychiatrist must, as soon as practicable, file a record of the revocation and the reasons for it.
- (3) If the carer, close family member or other personal support person previously requested to be notified of the event, the practitioner or psychiatrist must ensure that, as soon as practicable —
 - (a) the carer, close family member or other personal support person is notified of the notifiable event; and
 - (b) a record of when and how the carer, close family member or other personal support person was notified is filed and a copy given to the person in respect of whom the notifiable event occurred” (p. 104).

Making, revocation or expiry of involuntary treatment order

- (1) “The person responsible under this Part for notification of the making of an involuntary treatment order must ensure that, as soon as practicable, each of the persons and bodies specified in subsection (4) is —
 - (a) given a copy of the involuntary treatment order; and
 - (b) either —
 - (i) given the name and contact details of any carer, close family member or other personal support person who has been notified under section 140(1) of the making of the involuntary treatment order, to the extent that information is known to the person responsible; or
 - (ii) if no carer, close family member or other personal support person has been notified under section 140(1) of the making of the involuntary treatment order — advised of that and the reasons for it “ (p. 105).

Responsibility of patient’s psychiatrist

“A patient’s psychiatrist must ensure that any carer or close family member of the patient is provided with information referred to in section 285(1)(a), (c) or (d), or involved in a matter referred to in section 285(1)(b), if no other provision is made under this Act about who must ensure that any carer or close family member is provided with that information or involved in that matter” (p. 202).

Contacting carer or close family member

- (1) “This section applies in relation to each of these requirements —
 - (a) a requirement under this Act to provide any carer of a patient with information referred to in section 285(1)(a), (c) or (d) or involve any carer of a patient in a matter referred to in section 285(1)(b);
 - (b) a requirement under this Act to provide any close family member of a patient with information referred to in section 285(1)(a), (c) or (d) or involve any close family member of a patient in a matter referred to in section 285(1)(b).
- (2) Without limiting a requirement referred to in subsection (1)(a) or (b), the requirement is taken to have been complied with if the person responsible for ensuring that the requirement is complied with ensures that reasonable efforts to provide any carer or any close family member with the information or involve any carer or any close family member in the matter continue to be made until the first of these things occurs —
 - (a) at least one carer or one close family member is provided with the information or involved in the matter;
 - (b) it is reasonable for the person responsible to conclude that no carer or no close family member can be provided with the information or involved in the matter.
- (3) The person responsible must ensure that one of the following is filed —
 - (a) a record of when and how any carer or any close family member was provided with the information or involved in the matter;

(b) if no carer or no close family member could be provided with the information or involved in the matter — a record of the efforts made to do so.

(4) Sections 296 and 297 do not limit —

(a) the requirement under subsection (1)(a) to make reasonable efforts to provide a carer of a patient with information or involve a carer of a patient in a matter; or

(b) the requirement under subsection (1)(b) to make reasonable efforts to provide a close family member of a patient with information or involve a close family member of a patient in a matter” (p. 203-204).

Provision of information or involvement not in patient’s best interests

(1) A carer or close family member of a patient is not entitled under section 287(2) or 289(2) to be provided with particular information or involved in a particular matter if the patient’s psychiatrist reasonably believes that it is not in the best interests of the patient for the carer or close family member to be provided with that information or involved in that matter.

(2) A patient’s psychiatrist who decides under subsection (1) that a carer or close family member of the patient is not entitled to be provided with particular information or involved in a particular matter must —

(a) file a record of the decision and the reasons for it; and

(b) give a copy to each of —

(i) the patient; and

(ii) the Chief Mental Health Advocate” (p. 204).

Advising carer or close family member of decision

(1) A patient’s psychiatrist who decides under section 292(1) that a carer or close family member of the patient is not entitled to be provided with particular information or involved in a particular matter must, if the carer or close family member requests to be provided with the information or involved in the matter —

(a) advise the carer or close family member of the decision and the reasons for it; and

(b) file a record of the advice and give a copy to the patient.

Revocation of decision

(1) A patient’s psychiatrist may revoke a decision under section 292(1) that a carer or close family member of the patient is not entitled to be provided with particular information or involved in a particular matter if satisfied that the reasons for making the decision no longer apply.

(3) If the carer or close family member previously requested to be provided with the information or involved in the matter, the patient’s psychiatrist must ensure that, as soon as practicable —

(a) the carer or close family member is provided with the information or involved in the matter; and

(b) a record of when and how the carer or close family member was provided with the information or involved in the matter is filed and given to the patient.

(4) However, there is no requirement to involve the carer or close

family member in a matter if the time for doing so has passed.” (p. 205-206).

Patient’s psychiatrist must ensure regard had to patient’s wishes

(3) “The patient’s psychiatrist must ensure that, as soon as practicable, each of these people is given a copy of the reasons referred to in subsection (2)(c) —

(d) if the patient has a carer — the carer unless the carer is not entitled, for the reason referred to in section 288(2) or 292(1), to be given a copy;

(e) if the patient has a close family member — the close family member unless the close family member is not entitled, for the reason referred to in section 288(2) or 292(1), to be given a copy” (p. 130-131).

Further opinion may be requested

“(1) This section applies in relation to any of these people —

(d) if the person has a carer — the carer;

(e) if the person has a close family member — the close family member.

(2) A person to whom this section applies who is dissatisfied with the treatment being provided to the patient may request orally or in writing the patient’s psychiatrist or the Chief Psychiatrist to obtain the opinion (a further opinion) of a psychiatrist who is not the patient’s psychiatrist about whether it is appropriate to provide the treatment to the patient” (p. 132).

Preparation and review of (treatment) plan

“(3) The patient’s psychiatrist must ensure that —

(a) the plan (as prepared and as revised) is filed; and

(b) a copy of the plan (as prepared and as revised) is given to each of these people —

(v) if the patient has a carer — the carer unless the carer is not entitled, for the reason referred to in section 288(2) or 292(1), to be given a copy” (p.138).

“(4) Part 17 Division 2 applies in relation to a requirement under subsection (1)(e) to consult a carer of the involuntary inpatient, or under subsection (1)(f) to consult a close family member of the patient, in the preparation or review of the treatment, support and discharge plan” (p. 140).

Person’s rights to be explained to another person

“(1) The person responsible under section 246 must ensure that a carer, close family member or other personal support person of the person is provided with an explanation, as described in the regulations, of the person’s rights under this Act” (p.179).