

# Apprehension of mentally ill persons by a member of the police force under the *Mental Health Act 1986*

Program management circular – mental health

## Key message

The police now have two options upon apprehending a person who appears to be mentally ill in accordance with section 10 of the *Mental Health Act 1986*. The new option allows the police to arrange for an assessment of the person by a mental health practitioner. Upon making such an assessment, the mental health practitioner may decide to take any one of three possible courses of action.

## Purpose

To provide information about recent amendments to section 10 of the *Mental Health Act 1986* made by the *Health Legislation (Amendment) Act 2003*.

## Background

Under section 10(1) of the *Mental Health Act 1986*, a member of the police force may apprehend a person who appears to be mentally ill if the member of the police force has reasonable grounds for believing that:

- the person has recently attempted suicide or attempted to cause serious bodily harm to herself or himself or to some other person; or
- the person is likely by act or neglect to attempt suicide or to cause serious bodily harm to herself or himself or to some other person.

The *Mental Health Act 1986* specifies that in order to apprehend a person under section 10 of the Act, a member of the police force must form a belief that the person appears to be mentally ill **and** have reasonable grounds for believing that the person has harmed him/herself or others, or that there is a serious risk that the person is likely to do so in the future. The member of the police force is not required to exercise any clinical judgement as to whether a person is mentally ill, but need only to make a lay judgement that the person ‘appears to be mentally ill’ to the member of the police, based on the behaviour and appearance of the person.

Before the recent amendment, section 10(4) stated that a member of the police force must, as soon as practicable after apprehending a person, arrange for an examination of the person by a ‘registered medical practitioner’. The purpose of the examination is for the registered medical practitioner to decide if the person meets the criteria under section 8 of the Act and should be recommended for involuntary treatment under the Act.

## Amendments made by the *Health Legislation (Amendment) Act 2003*

The *Health Legislation (Amendment) Act 2003* amended section 10 so that the police now have two options:

- arrange for an examination of the person by a ‘registered medical practitioner’; or
- arrange for an assessment of the person by a ‘mental health practitioner’.

The amendment means that the police now have the option to take the person to a mental health practitioner for an assessment.

The changes came into effect on 15 October 2003.

### Who is a mental health practitioner?

The definition of a mental health practitioner is found in section 9(8) of the *Mental Health Act 1986* and the *Mental Health Regulations 1998*. Mental health practitioners are:

- registered nurses (Division 1 or Division 3 under the *Nurses Act 1993*);
- psychologists registered under the *Psychologists Registration Act 2000*;
- social workers; and
- occupational therapists,

who are employed by an approved mental health service and engaged in the provision of acute psychiatric assessment and treatment functions in the community.

In practice, mental health practitioners are usually members of community-based mental health services such as crisis assessment and treatment services (CAT) or integrated mental health services that have CAT/triage functions. Mental health practitioners are experienced in the provision of emergency mental health services and are familiar with the statutory criteria for determining whether a person should be admitted for treatment as an involuntary patient.

### What must the mental health practitioner do?

The mental health practitioner must personally examine the person for the purposes of the assessment. It is not appropriate to make an assessment over the telephone. Specific arrangements will need to be negotiated with the member of the police who has apprehended the person. This should include where the assessment is to be undertaken, staff involvement, the anticipated time of attendance and any other necessary information.

It is important to note that although mental health practitioners will always give top priority to urgent referrals from the police, they are not an emergency service and can only provide assistance as soon as practicable.

### What decisions can a mental health practitioner make under section 10?

The mental health practitioner must have regard to the criteria in section 8(1) in making a decision under section 10. Following an assessment of an apprehended person, a mental health practitioner may:

## About Program Management Circulars

The information provided in this circular is intended as general information and not as legal advice. If mental health staff have queries about individual cases or their obligations under the *Mental Health Act 1986*, service providers should obtain independent legal advice.

- advise the member of the police force to take the person as soon as practicable to a registered medical practitioner for an examination under section 9 of the Act; or
- complete an authority to transport in accordance with section 9(7A) of the Act and arrange for the person to be transported to an approved mental health service for an examination by a registered medical practitioner under section 9 of the Act; or
- advise the member of the police force that the person does not meet the criteria under section 8 of the Act and to release the person from apprehension under section 10.

In these circumstances, the member of the police force must release the person **unless** the member decides to take the person to be examined by a registered medical practitioner for the purposes of section 9 of the Act. However, section 10 does not limit any other powers that the police may have in relation to an apprehended person. For example, the member of the police force may decide to charge the person with offences related to the events which lead to the person being apprehended under section 10.

The amendment makes better use of the expertise of mental health practitioners by allowing them to make an assessment as to whether a person apprehended by the police should be released, or whether a registered medical practitioner should examine the person. In some cases this will enable a person apprehended by the police under section 10 to be released more quickly, which promotes better use of police resources.

### What should happen if the mental health practitioner advises the police that the apprehended person does not meet the criteria for involuntary detention?

If the mental health practitioner advises the member of the police force that the criteria under section 8(1) of the Act do not apply to the person and the member decides to release the person from apprehension under section 10, the mental health practitioner must make reasonable efforts to refer the person to agencies that can provide the person with appropriate treatment, care, support and services. This may include referral to other specialist services, such as a drug and alcohol counselling service, if the assessment indicated that would be more appropriate.

The mental health practitioner should also consider whether the person needs counselling and support in relation to their apprehension and the events leading up to their apprehension.

## Further Information

- Further information can be obtained from the Office of the Chief Psychiatrist.
- The revised *Protocol Between Victoria Police and the Department of Human Services Mental Health Branch*, 1995, will establish clear guidelines for police and mental health services' staff on handling situations where either agency has requested assistance from the other.

## Acknowledgements

Published by the Mental Health Branch,  
Metropolitan Health and Aged Care Services Division  
Victorian Department of Human Services  
Also published on <http://www.health.vic.gov.au/mentalhealth/pmc>  
March 2004