

# Independent Patient Rights Advisers

## 1. Purpose

This Policy outlines the relevant provisions of the *Mental Health Act 2016*, and the Chief Psychiatrist Policy, regarding the appointment and functions of Independent Patient Rights Advisers (IPRAs).

IPRAs play a key role in advising patients, nominated support persons, family, carers and other support persons of their rights under the *Mental Health Act 2016*. This strengthens the opportunity for patients and nominated support persons, family, carers and other support persons to exercise their rights under the Act.

## 2. Scope

This Policy is mandatory for all public sector authorised mental health services (AMHSs). An authorised doctor, authorised mental health practitioner, AMHS administrator or other person performing a function under the Act in a public sector AMHS must comply with this Policy.

This Policy must be implemented in a way that is consistent with the Objects and Principles of the Act.

## 3. Authorising Legislation

Section 305(2)(i) of the *Mental Health Act 2016*.

## 4. Background

### 4.1 Relevant legislative provisions

The Act provides that a chief executive of a Hospital and Health Service (HHS) must appoint one or more IPRAs to advise patients and their nominated support persons, family, carers and other support persons of their rights under the Act (section 293).

A 'patient' is defined in the Act (section 276) as:

- an involuntary patient, or
- a person receiving treatment and care for a mental illness in an authorised mental health service, other than as an involuntary patient, including a person receiving treatment and care under an advance health directive or with the consent of a personal guardian or attorney.

An IPRA may be either:

- an employee of an entity that a HHS has engaged to provide services (such as a non-government organisation), or
- an employee of an HHS but not employed in the Service's mental health service.

This Policy does not remove the responsibility for authorised doctors, authorised mental health practitioners, AMHS administrators or AMHS staff to advise patients of their rights, and to provide information to patients about their treatment and care.

The Act (section 294) provides that the functions of IPRA's are to:

- ensure that patients, nominated support persons, family, carers and other support persons are advised of their rights and responsibilities under the Act
- help patients, nominated support persons, family, carers and other support persons to communicate to health practitioners the patient's views, wishes and preferences about the patient's treatment and care
- work cooperatively with community visitors under the *Public Guardian Act 2014*
- consult with authorised mental health practitioners, authorised doctors, administrators and the Chief Psychiatrist on the rights of patients under the Act, the *Guardianship and Administration Act 2000* and the *Powers of Attorney Act 1998*
- advise patients and nominated support persons, family, carers and other support persons of the patient's rights at Mental Health Review Tribunal hearings
- if requested, help patients engage a representative for a Mental Health Review Tribunal hearing
- work cooperatively with any personal guardian or attorney to further the patient's interests, and
- advise patients of the benefits of an advance health directive or Enduring Power of Attorney for a personal matter.

In performing these functions, an IPRA must act independently and impartially, and is not subject to direction by any person in relation to the advice given to a patient or a patient's nominated support persons, family, carers and other support persons.

The requirement for 'designated persons', such as health service employees, to keep patient information confidential is outlined in the *Hospital and Health Boards Act 2011* (HHB Act). *The Mental Health Act 2016* (section 778) creates exceptions to this confidentiality duty, namely:

- designated persons can disclose confidential information about a patient, including the patient's health records and written notices given under the Act, to an IPRA to enable the IPRA to perform functions under the Act, and
- an IPRA may use or disclose personal information to perform their functions.

## 4.2 State-wide Co-ordinator

The IPRA State-wide Co-ordinator is employed within the Mental Health Alcohol and Other Drugs Branch in the Department of Health.

The State-wide Co-ordinator reports directly to the Chief Psychiatrist.

The State-wide Co-ordinator's responsibilities include:

- providing advice to IPRA's on the interpretation and application of complex provisions of the Act that relate to patient rights
- establishing and co-ordinating a State-wide network of IPRA's
- resolving major concerns in relation to patient rights identified by IPRA's that are reported to the State-wide Co-ordinator
- liaising with a broad range of mental health stakeholders, including mental health consumer and carer groups, advocacy organisations, non-government organisations, and staff of HHSs and AMHSs
- advising and consulting with IPRA's in relation to performing their functions under the Act, and
- assisting the Chief Psychiatrist in ensuring compliance with the Act and protecting the rights of patients and nominated support persons, family, carers and other support persons.

## 5. Policy

### 5.1 Application to HHS and External Agencies

Each HHS is required to comply with this Policy as a condition of the funding provided under service agreements with the Department of Health. Where a HHS elects to perform the IPRA functions through a contract or agreement with an external agency such as a non-government organisation, the HHS must ensure the entity is compliant with the service agreement and this Policy.

The HHS is responsible for ensuring the suitability of the agency and for ensuring the services performed by the agency meet the requirements of the service agreement and this Policy.

Without limiting this, the relevant agreement must attach this Policy and require compliance with the Policy as part of the agreement, including, but not limited to:

- employment under the role description
- staff will be remunerated at the level that meets the functional requirements of the position (recognising the relevant awards and organisational structures of the non-government sector)
- working co-operatively with other IPRA's and the State-wide Co-ordinator
- complying with the record-keeping requirements
- participation in training and professional development sessions arranged by the State-wide Co-ordinator
- providing information requested by the Chief Psychiatrist or State-wide Co-ordinator relevant to IPRA functions or outcomes, and
- the filling of vacancies.

### 5.2 Employment and functions of IPRA's

The employment arrangements and functions of IPRA's in an HHS or in an external entity such as non-government organisation must comply with this Policy.

#### 5.2.1 Employment and reporting

IPRA's employed within Hospital and Health Services are to be remunerated at a level equivalent to Administration Stream classification level AO7 in the 'District Health Services wage rates table'. IPRA's employed in an external entity such as a non-government organisation are to be remunerated at a level commensurate with the required competencies for the position.

IPRA's are to be employed in accordance with a standard role description – Attachment 1.

IPRA's are accountable either to an HHS or external entity. Managing the performance of an IPRA is the responsibility of either an HHS or external entity as the case may be.

Where the IPRA is employed in an external entity, HHSs must establish a point of contact within the HHS to discuss any operational management issues, such as access to patients.

#### 5.2.2 Coverage

HHSs must, as a minimum, appoint the number of IPRA's stated in Attachment 2.

In cases where HHSs are not large enough to warrant at least one full time position, arrangements must be made with the specified HHS to provide support, for example, a joint appointment of IPRA's. These arrangements are to be negotiated locally between HHSs.

### 5.2.3 Functions

IPRAs are to carry out the functions as outlined in section 294 of the Act. Further, IPRAs must work co-operatively with the State-wide Co-ordinator and other IPRAs.

IPRAs may liaise as required with the State-wide Co-ordinator. An example of when such liaison would be required is in circumstances where, in the opinion of an IPRA, an AMHS is not being sufficiently responsive to a complaint or to concerns raised about a patient's rights.

In circumstances where the immediate attention of the Chief Psychiatrist is required, IPRAs must contact the State-wide Co-ordinator for assistance.

## 5.3 Assessing patient needs and prioritising provision of advice

IPRAs will need to prioritise interaction with patients, having regard to the needs and circumstances of each patient, including:

- the patient's mental condition
- the patient's social circumstances, including, family and social support
- whether the patient is a newly-admitted patient, involuntary or voluntary patient, inpatient or community-based patient, and
- information about the patient received from clinicians and nominated support persons, family, carers and other support persons.

IPRAs will also need to prioritise the provision of advice to nominated support persons, family, carers and other support persons, having regard to the needs and circumstances of the support person and the relevant patient.

## 5.4 Recordkeeping, communication information, disclosure and accessing records and notes

### 5.4.1 Recordkeeping

IPRAs must keep records of whenever a patient has been seen by the IPRA.

IPRAs must also keep a detailed record of patient interactions, including:

- date, time, duration and location of interaction
- nature of interaction (e.g. face-to-face, audio-visual)
- other persons present (e.g. nominated support persons, family, carers or other support persons)
- whether an interpreter was required and provided
- for inpatients - how long after admission the patient was seen
- concerns raised by the patient about their rights or their treatment and care, and whether further action is required, and
- where follow up action is required, all action taken must be clearly documented.

These detailed notes are generally to be kept confidential from the patient's treating team.

To help ensure continuous improvement of IPRA services and to enhance patient outcomes, IPRAs must keep a record of common issues raised by patients or nominated support persons, family, carers and other support persons in relation to patient rights. This information is to be provided to the State-wide Co-ordinator upon request.

### 5.4.2 Communicating information and disclosure

There must also be proper communication of any high-risk information, such as suicidal ideations or an allegation of assault or mistreatment by a staff member, in accordance with hospital procedures.

IPRAs may use and disclose personal information to perform a function under the Act (section 778 of the Act).

### **5.4.3 Accessing records and notes**

IPRA records must be accessible for the proper management of complaints about treatment and care in accordance with established HHS procedures. *The Chief Psychiatrist Policy: Management of Complaints about the Treatment and Care of Patients* must also be followed.

IPRA notes are to be accessible by other IPRAs operating within the HHS, or if a patient is being treated in another HHS, by the IPRA working in that HHS.

The Chief Psychiatrist and the State-wide Co-ordinator may request access to IPRA notes at any time, for example, to investigate a serious complaint in relation to patients' rights.

An AMHS administrator may also request access to IPRA notes at any time, for example, if a patient is absent from an AMHS and there are concerns about the patient's health and well-being.

## **5.5 Skills, knowledge and training**

### **5.5.1 Provision and quality of advice**

IPRAs must provide advice to patients, and their nominated support persons, family, carers and other support persons, which is consistent with the information contained in the *Guide to Patient Rights under the Mental Health Act 2016*.

HHSs must ensure that IPRAs have sufficient skills and knowledge to allow them to capably and confidently perform their roles, prior to commencement of their employment.

### **5.5.2 Training materials**

The State-wide Co-ordinator is responsible for developing and disseminating training and other reference materials to the IPRA network.

IPRAs are responsible for understanding these materials and relaying relevant information to patients and nominated support persons, family, carers and other support persons.

### **5.5.3 Justices of the Peace and Commissioners for Declarations**

One of the functions of IPRAs is to advise patients of the benefits of making an advance health directive or Enduring Power of Attorney for a personal matter. Advance health directives and enduring powers of attorney need to be witnessed by a person who is a justice of the peace, a commissioner for declarations, or a lawyer.

While this Policy does not make it mandatory for IPRAs to be justices of the peace or commissioners for declarations, there would be operational benefits in this. HHSs should consider whether to endorse IPRAs to undertake training to be a justice of the peace or commissioner for declarations.

### **5.5.4 Performance management**

HHSs are to ensure that IPRAs are subject to usual HHS performance management processes and have plans developed with clear and measurable performance indicators, including the number of patients seen and duration of interactions, as an accountability mechanism for service delivery. For IPRAs employed in external entities, these performance measures are to be included in the agreement with the external entity.

The performance management process is not to interfere with or limit the independence of IPRA's.

#### **5.5.5 Participation in the IPRA network and training**

IPRA's must engage regularly with other IPRA's on the State-wide network, and participate in any training, professional development sessions or information activities arranged by the State-wide Co-ordinator.

### **5.6 State-wide Co-ordination**

#### **5.6.1 Contact details**

Monitoring of IPRA positions and maintaining the network of advisers is the responsibility of the State-wide Co-ordinator. HHSs must advise the State-wide Co-ordinator of IPRA appointments before employment commences. Any subsequent changes to IPRA's must also be advised to the State-wide Co-ordinator at the earliest opportunity.

#### **5.6.2 Information and assistance upon request**

IPRA's and HHS representatives must provide any information requested by the Chief Psychiatrist or the State-wide Co-ordinator relevant to IPRA functions or outcomes.

A review of IPRA's is to be commenced within two years after the commencement of the Act. IPRA's and HHS must diligently participate in this review process, and provide all necessary assistance to the State-wide Co-ordinator and others, as part of this review process. Further, IPRA's and HHSs must make every effort to assist the Chief Psychiatrist and the State-wide Co-ordinator to carry out their functions as they relate to IPRA's.

#### **5.6.3 Filling of vacancies and handovers**

HHSs must advise the State-wide Co-ordinator within five (5) business days of an IPRA role becoming vacant, including on resignation of an IPRA. The HHS must immediately make arrangements to fill the IPRA role, ensuring uninterrupted continuity of the position. When an IPRA is on annual leave, arrangements must be made to fill the position, before the period of leave commences. If an IPRA resigns or takes annual leave for any period, arrangements must be made to ensure a comprehensive handover is delivered, to ensure continuity of patient care.

### **5.7 Complaints management**

A key component of ensuring patients and their nominated support persons, family, carers and other support persons can pursue their rights under the Act will be ensuring that any concerns and complaints raised by these persons about their rights or the provision of treatment and care are managed appropriately. The *Chief Psychiatrist Policy: Management of Complaints about the Treatment and Care of Patients* outlines how complaints are to be managed.

## 6. Supporting documents, related approved forms or attachments

- Attachment 1: IPRA Role Description
- Attachment 2: Allocation of IPRA's across Hospital and Health Services
- Guide to Patient Rights under the Mental Health Act 2016

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