

Lessons and Learnings

Care of consumers detained under the *Mental Health Act*

When consumers are detained under the *Mental Health Act 2007*, they should continue to receive care in a mental health facility until they are well enough for community-based care.

Case background

A male adult consumer with a history of mental illness and drug misuse was in the custody of Corrective Services NSW.

During a court mention, the Magistrate ordered that the consumer be taken to the nearest mental health facility for assessment in accordance with section 19(b) of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*. On assessment, the consumer was found to be a mentally ill person and was admitted to the inpatient unit.

Following a brief admission, the consumer was subsequently discharged from the inpatient unit into the custody of police. Hospital inpatient clinicians incorrectly assumed the consumer would be returned to a correctional centre. Later that day he was found unresponsive in the community from an overdose of an illicit substance.

Case discussion

This case required NSW Police be contacted once it was determined that the consumer was no longer to be detained under the *Mental Health Act 2007*. The medical officer was then required to detain the consumer pending apprehension by police at the point of discharge.

The future trajectory of a consumer in police custody is always unknown. For example, the court may order them to be remanded in a correctional custody, or the court may grant bail for the consumer to reside in the community. Treatment planning must

therefore consider the possibility of community release and incorporate an understanding of access to mental health treatment within the forensic system.

In custodial settings, mental health service engagement is voluntary, and consumers **are able** to decline treatment. There is no provision under the *Mental Health Act 2007* for a consumer to be involuntarily treated in custody.

When consumers are detained under the *Mental Health Act 2007*, they should continue to receive care in a mental health facility until they are well enough for community-based care. When discharging a consumer into police custody, care must be taken to ensure adequate community supports and follow-up. The realistic likelihood of a consumer being released to the community should be considered. Family and carers should be involved in the discharge planning process.

Resources

You can read the *Mental Health Act 2007* and the *Mental Health Act 2007 Guide Book* [on the NSW Health website](#).

We value your feedback. If you have any questions or comments about this report, please email CEC-PatientSafety@health.nsw.gov.au