Electro-convulsive Therapy (ECT) Mental Health Act 2009 and the PPTP

Electroconvulsive Therapy Skills Training Workshop

17th November, 2022

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- The Adelaide region in which we live and work are the traditional lands of the Kaurna people.

- We pay respect to Elders past and present.

Overview

- Review of the MH Act
- Prescribed Psychiatric Treatment
- ECT
- Neurosurgery for Mental Illness
- Other Prescribed Psychiatric Treatment
- ECT and Restrictive Practice
- ECT and Advance Care Directives
- Prescribed Psychiatric Treatment Panel

Review of the Mental Health Act 2009

- Submissions have been made during 2022
- Report to the minister by the reviewers will be made in February 2023
- Legislative change expected in 2024.
- Changes regarding ECT are likely to include alterations to allow use of reasonable force to provide ECT treatment if someone is under an ITO.
- Maybe changes to the triggers for PPTP review of individual cases of ECT

Prescribed Psychiatric Treatment

- ECT and neurosurgery for mental illness are prescribed psychiatric treatments under the MHA.
- Prescribed psychiatric treatment is regulated separately to other treatments. They require specific consent and the authorisation of a psychiatrist.
- Neurosurgery requires authorisation of the PPTP.
- Emerging treatments may be considered by the PPTP

Electro-Convulsive Therapy

- Section 42: ECT may only be administered if:
- The patient has a mental illness,
- ECT has been authorised by a psychiatrist who has examined the patient,
- Consent has been provided by:
- An adult patient, or
- If the patient is incapable of making decisions:
- A substitute decision maker, or
- A guardian, or
- SACAT on application.
- Consent for a person under 16 can be provided by a parent, guardian or SACAT on application.

ECT Consent

- Consent to a course of ECT must be made using Form MRMHA-L “Consent to ECT”.
- Consent lasts for a maximum of 12 ECT treatments or a maximum of 3 months, whichever condition is met first.
- Consent to ECT:
  - Extends to the administration of anaesthetics.
  - Does not extend to the use of restrictive practice.
  - Can be withdrawn at any time.
- A copy of the consent form must be placed in the notes
- Please check the form thoroughly
- Send copy to the OCP - refer section 42(7) of the Act.

ECT Consent

- Is a process in which detailed information should be provided to the patient, their family and carers.
- Information should include indication for ECT, alternative treatment and consequences of not having treatment.
- The process of ECT should be described in detail, preferably with video available .
- Side effects and adverse events, including the possibility of irreversible adverse events such as retrograde memory loss need to be explained.

ECT Consent

- In order to consent to ECT treatment the person must be able to understand the information,
- Retain the information
- Demonstrate that they understand the information, and
- Communicate their decision.
- Ability to consent can vary over time and with differing situations.
- Important to document consent process in case notes
- Involvement of family or carer very important

ECT Consent

- Consent given by the individual can be withdrawn at any time up until the administration of the anaesthetic agent.

Emergency ECT without Consent

- Emergency ECT without consent can only be performed:
  - By a psychiatrist if they consider that the patient has a mental illness of such a nature that ECT is urgently needed for the patient's wellbeing, and
  - If in the circumstances it is not practicable to obtain consent.
- Emergency ECT must be authorised using Form MRMHA-M "Administration of an episode of emergency ECT without consent".
- A copy of the form must be kept in case notes and sent to the OCP refer section 42(7) of the Act.
- An application to SACAT for consent should be completed as soon as practical.

ECT Consent by Others

- Consent to ECT by Substitute Decision Maker(SDM) appointed under an advanced care directive must be signed by all appointed SDMs unless very impractical
- The same level of explanatory detail is needed
- SACAT will explain their process.
- Parents can consent if person under 16 years of age but this is very rare (not at all in past 5 years)

Neurosurgery for Mental Illness and other treatments

- There have been no requests for authorisation for neurosurgery for mental illness during the life of the PPTP, but the process is in place.
- Other treatment modalities such as TMS have been discussed , but there is currently no intention to make this or any other treatment part of the prescribed psychiatric treatments

Two important issues

- The need to clarify legal authority for restraint, and then inform the sector, emerged from two earlier case reviews undertaken by panel members.
- Cases were identified by considering Safety Learning System reports.
- The need to re-communicate the binding status of Advance Care Directive refusal was identified in discussions emerging from ECT progress reviews (although there were no cases identified where advance care directives had not been followed).

ECT and Restrictive Practice

- This became an important issue when the PPTP identified issues related to the mental health act and the use of restrictive practice (ie reasonable force) to facilitate the provision of ECT to a person.
- Section 42 of the MHA relates to this issue. The MHA provides for extra protections for people undergoing a prescribed psychiatric treatment
- It meant that an ITO or Section 56 (Care and Control) were not sufficient in the act to allow any restrictive practice.
- The practical implications of this meant that an act such as holding a patient's hand still to allow the placement of an intravenous cannula is not lawful

ECT and Restrictive Practice

- The use of restrictive practices (force) to administer ECT cannot be authorised under the MHA, however it can be authorised by an order of the South Australian Civil and Administrative Tribunal (SACAT) pursuant to subsection 32(1)(c) of the Guardianship and Administration Act 1993 (GAA).
- Subsection 32(1)(c) special powers provide, for a person with a Guardian or Substitute Decision Maker, the authority for the use of restrictive practice by the people providing treatment and care to ensure proper medical treatment and day-to-day care.
- SACAT authority only applies to the service provider - not a guardian or substitute decision-maker

ECT without Restrictive Practice

- ECT can be administered without restrictive practices when
- The patient has a mental illness AND
- ECT has been authorised by a psychiatrist who has examined the patient AND
- A valid consent is completed according to the law by patient, guardian, SDM or SACAT OR
- A MRMHA-M form has been completed for an emergency ECT treatment AND
- the patient does not physically resist the treatment

ECT with Restrictive Practice

- ECT can be provided with the use of restrictive practice if the patient has or is very likely to physically resist the treatment
- AND
- …..A guardian appointed under section 29 of the *Guardianship and Administration Act 1993*, or a substitute decision maker appointed under an ACD, has made a section 32(1) special powers application under the GAA,
- **AND**
- SACAT has made a special powers order under section 32(1) of the GAA authorising the persons involved in the care of the patient to use such force as may be reasonably necessary for the purpose of ensuring proper medical treatment.

ECT with Restrictive Practice

- In practice this means that section 32(1)(c) powers are often necessary for those patients that need SACAT or SDM consent.
- The need for these powers will have to be considered if applying for SACAT consent or if a SDM consent is to be used.
- This may be one of the parts of the MHA 2009 that is altered in the review of the Act

ECT, Restrictive Practice and Consent

- Guardians and substitute decision-makers retain a role in decisions about the use of section 32(1)(c) special powers because it is only they who can apply to the Tribunal for an order under section 32(1)(c).
- Once an order for special powers is made, the treating team can use force as reasonably necessary to ensure proper medical treatment. The guardian or SDM need to be kept informed
- With respect to guardianship and administration orders, SACAT will tailor an order to provide specificity to the patient's circumstances with appropriate flexibility, rather than make a broad order. This follows the principles of least restrictive practice.

Advance Care Directives and the Mental Health Act

- *The Advance Care Directive Act 2013* (ACDA) empowers adults to make an Advance Care Directive (ACD) for their future health care, end of life, preferred living arrangements and other personal matters, and/or appoint one or more substitute decision makers (SDMs) to make decisions on their behalf when they are unable to do so themselves.
- The ACDA does not allow for a person to refuse mandatory care, including mental health care provided under section 56 ‘Care and Control’, a Community Treatment Order or an Inpatient Treatment Order of the MHA.

Advance Care Directives and ECT

- The *Advance Care Directives Act 2013* (ACDA) allows for a person to make an ACD, which may contain binding provisions for the refusal of particular treatments.
- Such a binding provision can include refusal of ECT.

Effect of an Advance Care Directives that refuses ECT

- A binding provision refusing ECT cannot be displaced by a guardian or substitute decision maker.
- Nor can it be displaced by a psychiatrist through authorisation of emergency ECT without consent under subsection 42(6) of the MHA or through use of the emergency medical treatment powers of section 13 of the Consent to Medical Treatment and Palliative Care Act 1995.
- Nor can it be displaced by SACAT and an application to SACAT for consent to ECT under subsection 42(1) of the MHA should not be made.*
- An exception maybe made if the person can consent to ECT (regardless of what their ACD says) or if there is evidence of past consent or expressed change of mind and the person has since lost capacity; SACAT can authorise ECT – in effect the ACD is out of date in this regard.

Effect of an Advance Care Directive that refuses ECT

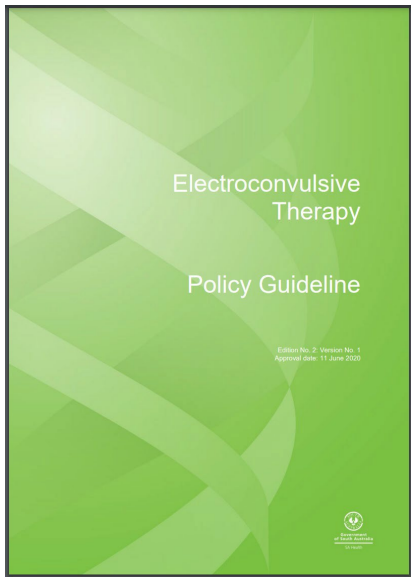
- If the treating team , SCM or guardian believe that the ACD was made at a time when the person was incompetent to make the decision, SACAT can be asked to review the validity of the decision.

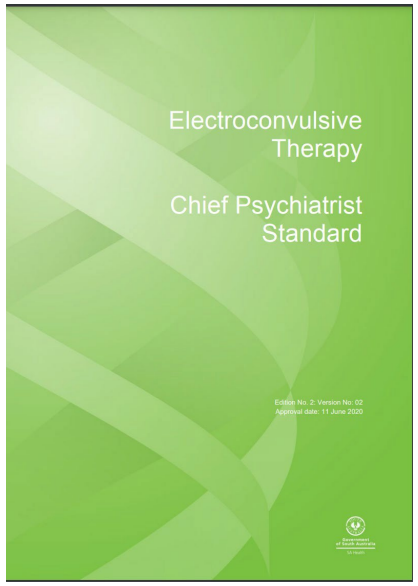
For more information

Office of the Chief Psychiatrist Tel: 8226 1091

- Email: HealthOCP@sa.gov.au
- Web: www.chiefpsychiatrist.sa.gov.au

- ECT Policy Guideline
- ECT Chief Psychiatrist Standard





Prescribed Psychiatric Treatment Panel (PPTP)

- Background to the creation of the Prescribed Psychiatric Treatment Panel
- The Panel's key functions
- Panel membership
- Panel process
- Advice on receiving a request
- Questions

Why was the PPTP created?

- Mental Health Act Review in 2014.
- Legislation to reflect contemporary attitudes to mental health, developments in international human rights.
- A review mechanism was deemed necessary to ensure Electroconvulsive Therapy practice meets clinical standards.

The Panel's key functions

- MHA 2009-Part 7 - Regulation of Prescribed Psychiatric Treatments (commenced 5 June 2017)
- Section 41C – **Functions of Panel**
- To conduct review of ECT by Panel under two conditions:
  - 3 or more courses of ECT in a 12-month period
  - 2 or more emergency ECT in a 12-month period
- To authorise neurosurgery as a treatment for mental illness
- Any other function conferred on the Panel
  - As delegates of the Chief Psychiatrist can inspect ECT facilities and conduct case reviews
  - Review Safety Learning System incidents relevant to ECT treatment
- Section 44(4)
  - Capacity to introduce regulations to address new treatments as they emerge

Panel membership

- Up to eight persons, six prescribed by the Act, qualified by knowledge, expertise and experience.
- Governor's approval of recommendations for appointment is sought via a Cabinet submission.
- Panel comprises Chief Psychiatrist and other specified membership:
  - Senior Psychiatrist
  - Neurosurgeon
  - Consumer
  - Carer
  - Bioethicist
  - Legal practitioner

Panel membership

- Senior Psychiatrists
  - Dr Shane Gill
  - Dr Belinda Edwards
  - Dr Tom Paterson
- Neurosurgeon
  - Dr Terry Coyne
- Consumer
  - Cecil Camilleri PhD
- Carer
  - Judy Smith AM
- Bioethicist
  - Assoc. Professor Jaklin Eliott
- Legal practitioner
  - Tara Simpson

Panel process

- Panel requests a report on patient ‘progress’ by the treating psychiatrist.
- Two template (3+ consents / 2 ‘Emergency ECT’) are provided as guidance.
- The report is considered by one psychiatrist and one non-psychiatry Panel member, and findings presented to the Panel at monthly meeting.
- In general, an observation provided to treating psychiatrist is ‘care is appropriate in circumstances’.
  - If insufficient detail or uncertainty, Panel will ask further specific feedback, and re-assess in following meeting.

Advice on receiving a request

- Don’t Panic
- The panel want to know some details of the patient’s story. The information is not just about the facts of treatment.
- Consider the progress of the patient and provide
  - A brief clinical history
  - Reasons for ECT treatment
  - Specifics of type of treatment, electrode placements, doses, changes to placements , number of treatments
  - Outcome of treatment
  - Current status of patient and future treatment and care plans

Advise on receiving a request

- Please check the file carefully, check sequence of consent forms provided.
- Include any rating scales available and cognitive scales if possible
- Show the panel that there has been respect for patient preferences, patient engagement in treatment plans, involvement of family, carers or other substitute decision makers.
- Show detail of timely assessment, consent and treatment in emergency cases.
- An opus is not necessary

Other Activities of the Panel

- Using delegation powers, the Chief Psychiatrist uses the expertise of the Panel to assist with other matters. This has included:
  - reviewing incidents relating to ECT made into the SA Health Safety Learning System;
  - inspecting ECT Suites, under delegated inspection powers.

PPTP- changes

- Restricting review of three consents or more patients when ECT has been purely maintenance.
- Looking at triggers for review to try to capture more complex patients, or unusual treatment regimes.
- Perhaps more scrutiny of SLS type reports or incidents
- Currently , the PPTP requests a report from the treating psychiatrist.
- We rely on psychiatrist goodwill
- Thank You

In closing

- Need advice or assistance, or an extension of time to make a report?
  - Contact the Panel executive officer in the Office of the Chief Psychiatrist.
  - Email
    - Health.OCPPPTP@sa.gov.au
- Any questions?