Coercive treatment options for eating disorders: the *Mental Health Act* and the *Guardianship Act*

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Overview

- Coercive treatment is only available where voluntary treatment is not successful or the person lacks the capacity to consent to voluntary treatment.
- There are two statutory regimes which allow for coercive treatment of eating disorders
  - *Mental Health Act 2007*
  - *Guardianship Act 1987*
- Preparing your application to the MHRT or NCAT

The *Mental Health Act 2007*

Can an eating disorder mean someone is a "mentally ill person"?

1. A mental illness is a condition that seriously impairs, either temporarily or permanently, a person's mental functioning"

   Anorexia or bulimia nervosa, are conditions which lead to an inability to make rational decisions about food intake despite the threat to life. A person may also experience symptoms of depression, anxiety or OCD

2. is characterised by:
   - delusions *(eg a fixed idea that s/he is grossly overweight)*
   - serious disturbance of mood *(eg lability of mood, esp. if also has depression or anxiety)*
   - serious disturbance of thought form *(thought processes may be illogical from cognitive impact of starvation)*
   - irrational behaviour indicating one or more of the above *(refusing to eat, sabotaging treatment options, exercising obsessively)*

Eating disorder and mentally ill persons cont...

3. Care, treatment or control of the person is necessary to protect the person from serious harm *(eating disorders can be life threatening and cause long term health complications)*
4. Clinicians can consider the "continuing condition" of the person including any likely deterioration and the likely effects of any such deterioration *(ongoing compulsory treatment may be needed to avoid relapse on discharge or to ensure longer term treatment eg CBT or allow sustained weight gain to effect cognitive change)*
5. An involuntary admission is the only form of safe and effective care appropriate and reasonably available *(voluntary care or guardianship not adequate)*

Treatment authorised by the MHA

- MHA allows for care treatment and control
- A person detained under the MHA may be given "any treatment (including any medication) the authorised medical officer thinks fit"
- Treatment could include:
  - Medication
  - Restrictions on movement
  - Meal plans and other dietary measures
  - CBT and other psychological therapies
  - Re-hydration or naso-gastric feeding

Detaining a mentally ill person in a medical ward

- A mentally ill person can be detained in a medical ward if that is necessary to provide medical treatment or care.
  - Is Guardianship Act consent needed to non-mental health treatments?
- The person is detained under the MHA, so mental health staff must :
  - Complete 2 x Form 1s and bring the person before Tribunal
  - May administer mental health treatment
  - Are responsible for making mental health treatment decisions
- If the person's medical condition means they are "not fit" to be interviewed or to be brought to the Tribunal, that step can wait until the person is medically able to do so: s 33 MHA.

Length of stay under the MHA

- A mentally ill person must be discharged from a mental health facility (or be made a voluntary patient) as soon as:
  - no longer at risk of serious harm to self OR
  - delusional beliefs, or irrational behaviours stop OR
  - they can be safely managed under less restrictive circumstances (eg voluntary, or guardianship alone)
- But, clinicians can have regard to the person's continuing condition, including need for a sustained period of recovery before discharge to ensure cognitive improvement.
- Subject to regular reviews by the MHRT.

Mentally disordered person

- A person can be detained as a mentally disordered person if the person's behaviour is so irrational as to justify a conclusion on reasonable grounds that temporary care, treatment or control of the person is necessary.
- Can detain for :
  - 3 business days
  - on a max of 3 occasions in any 1 calendar month.

CTOs and eating disorders

- A CTO
  - has to be implementable
  - can only cover treatment, counselling, management, rehabilitation or other services
  - has to be offered by a declared mental health facility (ie public sector mental health team)
- CTO can be useful for regular appointments, taking medications, weigh ins and is an opportunity create a therapeutic relationship.
- Challenges:
  - Plan has to include a CMHT, although it can also involve other clinicians eg an eating disorders outpatient program
  - Plan mandates a rigorous diet *(who will supervise?, how is a breach determined? plan may not "implementable")*

Guardianship Act 1987

Can an eating disorder justify a guardianship order?

- A guardianship order can be made if a person is totally or partially incapable of managing their person
  - because they are intellectually, physically, psychologically or sensorily or otherwise disabled *nature of an eating disorder impacts on an ability to make decisions because of the drive to weight loss, plus starvation can lead to serious cognitive impairments*
  - are restricted in one or more major life activities to such an extent that he or she requires supervision or social habilitation.

    Supervision needed or the person will sabotage treatment, with life threatening consequences

Treatment authorised under GA

- Need to specify the powers to be exercised by the guardian in the order. They may include:
  - Medical/dental treatment
  - Power to override person's objection to treatment
  - Accommodation (to attend a residential program)
  - Coercive accommodation function to prevent departure and authorise police/ambulance to return the person if they leave
- The duration of orders:
  - a temporary order for 30 days, with powers to the Public Guardian (often made if hearing conducted urgently)
  - Continuing order for up to 12 months to either a family member or the Public Guardian

Preparing for an application

MHA or GA?

- Treatment under the MHA can start as soon as the Schedule completed or Form 1 written for a voluntary patient. No need to wait for a MHRT hearing.
- But, MHA only operates in gazetted mental health facilities
  - Many Eating Disorders Units in public hospitals are not gazetted
  - Private sector eating disorder clinics not gazetted
- GA allows coercive treatment outside of gazetted mental health facilities and allows medical treatment.
  - But, an order must be made by NCAT and the treatment authorised by the guardian. (Both can be done urgently out of hours if need be.)

Reports/applications

- Eating disorders are relatively unusual before both MHRT and NCAT.
- Spell out:
  - Past history of treatment (success/failures)
  - Risks to health – immediate and longer term
  - Cognitive impacts of starvation
  - Current treatment options, urgency and what is required to achieve efficacy
  - Why voluntary treatment is not sufficient
- Try to link the evidence to the statutory criteria

Include families

- Statutory obligations to include families/carers in hearings under the MHA and the GA
  - Carers can give valuable longitudinal evidence
  - Often key supporters in a person's recovery from any mental illness
- Under the GA, NCAT may wish to ask questions about who should be the person's guardian
  - Obliged to try to appoint a private person
  - Can appoint Public Guardian where no other person suitable, or to preserve family relationships

Questions???