



Review of the *Mental Health Act 2009 (SA)*

Fact Sheet 8 – The Role of the South Australia Police

Powers of the South Australia Police

The role of the South Australia Police ('SAPOL') under the *Mental Health Act 2009 (SA)* ('MHA') can be problematic for all people involved.¹ Section 57 of the MHA gives SAPOL 'care and control' powers (see Fact Sheet 5), which allow them to assist consumers (people with a lived experience of mental illness) who are at risk of harm, to get assessed and treated. Under the law, SAPOL can:²

- Take a person into their care and control;
- Transport a person to a particular place;
- Restrain or use force;
- Enter and remain in a place;
- Use reasonable force to break into a place to find a person; and
- Search and take property from a person.

These powers can be used when a person does not comply with a Community Treatment Order, needs to be transported to a particular place or has left hospital without permission.

Current Issues

There are three key issues. First, SAPOL can use these powers when it appears to them that the person has a mental illness, has caused or at risk of causing harm to themselves or others and needs a medical review. The way in which a police officer determines this must be considered and whether this should be a task for SAPOL.

Second, if a person has committed a criminal offence, is in police custody and needs treatment, the MHA requires the hospital to 'hold' them.³ If this person does not need treatment, the law allows hospital staff to detain them until SAPOL arrive. It is unclear whether the law permits use of force to detain. It has been suggested the MHA could be changed to allow use of force by hospital staff in these circumstances.

Third, section 57 of the MHA does not clearly allow the use of care and control powers to enforce cross border arrangements. These refer to the application of treatment orders between South Australia and other Australian States or Territories. It has been suggested that the law should permit the exercise of care and control powers as reasonably required for persons with an interstate treatment order. For example, SAPOL could make sure a person, who has travelled to South Australia and has a treatment order from Victoria, can receive treatment here.

Consultation Questions

1. Should SAPOL be involved in the enforcement of the MHA? If not, who should be given these powers?
2. Should the law allow hospital staff to use reasonable force to 'hold' a person until SAPOL arrives?
3. Should the law allow the use of care and control powers to enforce cross border arrangements?

¹ This theme was highlighted by the recent Victorian Royal Commission.

² See *Mental Health Act 2009 (SA)* s 57(4).

³ SALRI will not be looking at issues relating to mental health and the criminal law.