

Application of the Better Regulation Principles

Mental Health Regulation 2019

Principle 1 - Need for government action should be established

The Mental Health Act 2007 provides the principles for the care, treatment and control of persons who are mentally ill or mentally disordered, and the facilitation of community care or hospital care for those persons on a voluntary or involuntary basis as appropriate.

The Mental Health Regulation 2013 (2013 Regulation) currently gives effect to the Act by, among other things, outlining provisions in relation to medical superintendents, official visitor functions, procedural matters in mental health inquiries and the administration of the Mental Health Review Tribunal, as well as the establishment and management of patient's funds and accounts.

The 2013 Regulation is due to be repealed on 1 September 2019 in accordance with the provisions of the Subordinate Legislation Act 1989. The Mental Health Regulation 2019 (2019 Regulation) has been prepared to replace the 2013 Regulation. The 2019 Regulation is in substantially the same form as the 2013 Regulation except that the 2019 Regulation allows psychosurgery to be carried out to treat epilepsy.

Psychosurgery is a procedure that creates lesions in the brain for the purpose of altering the thoughts, emotions or behaviour of the patient.

The Mental Health Act currently bans any person carrying out certain treatments, including psychosurgery. However, psychosurgery can be carried out for the treatment of any condition or illness prescribed by the regulations.

Psychosurgery has long been recognised and allowed for the treatment of Parkinson's diseases. The 2013 Regulation also allows psychosurgery to be carried out to treat Gilles de la Tourette syndrome, chronic tic disorder, tremor and dystonia. There is sufficient evidence to support the use of psychosurgery to treat epilepsy. Accordingly, the 2019 Regulation allows psychosurgery to be carried out to treat epilepsy.

While remakes of Regulations normally require the preparation of a regulatory impact statement, the Parliamentary Counsel has advised that the 2019 Regulation relates to matters set out in Schedule 3 of the Subordinate Legislation Act, being machinery matters and matters not being likely to impose an appreciable burden, and therefore a regulatory impact statement is not required. However, the Ministry of Health did consult with key stakeholders on the proposal to remake the 2013 Regulation.

Principle 2 – The objective of government action should be clear

The objective of the 2019 Regulation is to remake the 2013 Regulation and support the operation of the Mental Health Act.

Principle 3 – The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options

Consideration has been given to non-regulatory options. However, the 2019 Regulation is considered necessary to support the operation of the Mental Health Act

Principle 4 - Government action should be effective and proportional

The 2019 Regulation is considered an effective and proportional response.

Principle 5 – Consultation with businesses and the community should inform regulatory development

A consultation draft Mental Health Regulation 2019 (Draft Regulation) was released for public consultation for a period of over five weeks. Twenty six submissions were received on

the Draft Regulations from various stakeholders such as carer and consumer groups, LegalAid, Local Health Districts, health groups and the Mental Health Review Tribunal. Submissions on the Draft Regulation were considered in making the 2019 Regulation.

Principle 6 – The simplification, repeal, reform, consolidation of existing regulation should be considered

The 2013 Regulation will be repealed on the commencement of the 2019 Regulation.

Principle 7 – Regulation should be periodically reviewed and, if necessary, reformed to ensure its continued efficiency and effectiveness

The 2019 Regulation will be subject to the normal five-yearly detailed staged review under the Subordinate Legislation Act 1989.