



Australian Capital Territory

# Mental Health Amendment Act 2016

A2016-32

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Australian Capital Territory

# Mental Health Amendment Act 2016

**A2016-32**

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An Act to amend the *Mental Health Act 2015*, and for other purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

## **1 Name of Act**

This Act is the *Mental Health Amendment Act 2016*.

## **2 Commencement**

- (1) This Act (other than the following provisions) commences on the day after its notification day:
- section 86
  - section 96
  - section 97
  - section 101
  - schedule 1.

*Note* The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

- (2) The provisions mentioned in subsection (1) commence on the later of—
- (a) the commencement of the *Mental Health (Secure Facilities) Act 2016*, section 3; and
- (b) the commencement of this Act, section 3.

## **3 Legislation amended**

This Act amends the *Mental Health Act 2015*.

*Note* This Act also amends the following legislation (see sch 1):

- *Children and Young People Act 2008*
- *Corrections Management Act 2007*.



**4 Nominated person—functions  
Section 20 (1)**

*after*

interests

*insert*

, views and wishes

**5 Entering into advance agreement  
New section 26 (5) (b) (iia) to (iid)**

*insert*

- (iia) if there is a person who is likely to provide practical help under the agreement and the person consents to that person being given a copy—that person; and
- (iib) if the person has a carer and the person consents to the carer being given a copy—the carer; and
- (iic) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian and the ACAT; and
- (iid) if the person has an attorney under the *Powers of Attorney Act 2006*—the attorney; and

**6 Making advance consent direction  
New section 27 (6) (b) (iia)**

*insert*

- (iia) if the person has a carer and the person consents to the carer being given a copy—the carer; and

**7 Ending advance agreement or advance consent direction  
Section 29 (4) (a) (ii) and (iii)**

*substitute*

- (ii) is given to—
- (A) any member of the person’s treating team who does not have access to the person’s record; and
  - (B) if the person has a nominated person—the nominated person; and
  - (C) if there is a person who was likely to provide practical help under the agreement and the person consents to that person being given a copy—that person; and
  - (D) if the person has a carer and the person consents to the carer being given a copy—the carer; and
  - (E) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian and the ACAT; and
  - (F) if the person has an attorney under the *Powers of Attorney Act 2006*—the attorney; and

**8 Assessment order  
Section 37 (b)**

*omit*

section 79 (Review, amendment or revocation of mental health order)

*substitute*

section 79 (Review of mental health order)

**9 Content and effect of assessment order  
Section 40 (1) (b) to (d)**

*substitute*

- (b) state the approved mental health facility or other place at which the assessment is to be conducted and, if appropriate, the person who is to conduct the assessment; and
- (c) if the assessment is to be conducted at an approved mental health facility—
  - (i) direct the person to be assessed to attend the facility and, if necessary and reasonable, stay at the facility until the assessment has been conducted; and
  - (ii) direct the person in charge of the facility to—
    - (A) if appropriate, admit the person to be assessed to the facility to conduct the assessment; and
    - (B) if necessary and reasonable, detain the person at the facility until the assessment has been conducted; and
    - (C) provide the assistance that is necessary and reasonable to conduct the assessment.

**10 Time for conducting assessment  
New section 42 (1) (c)**

*insert*

- (c) if a removal order is made under section 43 (2) in relation to the assessment—7 days after the day the removal order is executed.

**11 Person to be assessed to be told about order  
Section 47 (1) and (2)**

*substitute*

- (1) This section applies if an assessment is to be conducted at an approved mental health facility or other place under an assessment order.
- (2) The person in charge of the approved mental health facility or other place must, before the assessment is conducted, ensure that the person to be assessed is told about the assessment order, including the process of assessment and possible outcomes of an assessment, in a way that the person is most likely to understand.

**12 Copy of assessment  
Section 48 (1) and (2)**

*after*

mental health facility

*insert*

or other place

**13 Definitions—ch 5  
Section 50, definition of *relevant person*, paragraph (b)**

*substitute*

- (b) for a community care order—a person who can make the statement required under section 51 (3) (a) for the application.

**14 Psychiatric treatment order  
Section 58 (2) (b) (i)**

*omit*

treatment;

*substitute*

treatment, care or support;

**15 Role of chief psychiatrist—psychiatric treatment order  
Section 62 (2), new note**

*insert*

*Note 1* The power to make an instrument includes the power to amend or repeal the instrument (see [Legislation Act](#), s 46).

**16 Powers in relation to psychiatric treatment order  
Section 65 (5) (b)**

*substitute*

(b) tell the public advocate in writing of the restraint, involuntary seclusion or forcible giving of medication; and

**17 Powers in relation to community care order  
Section 73 (5) (b)**

*substitute*

(b) tell the public advocate in writing of the restraint, involuntary seclusion or forcible giving of medication; and

**18 Section 79 heading**

*substitute*

**79 Review of mental health order**

**19 Section 79 (6) (a)**

*before*

amend

*insert*

confirm,

**20 Statement of action taken  
New section 83 (2) (aa)**

*insert*

- (aa) tell the public advocate in writing of any restraint, involuntary seclusion or forcible giving of medication included in the statement; and

**21 Initial examination at approved mental health facility  
Section 84 (4) (b)**

*substitute*

- (b) the chief psychiatrist must arrange for an initial examination of the subject person to be conducted as soon as possible and within 2 hours of being told about the detention.

**22 Authorisation of involuntary detention  
Section 85 (1)**

*after*

involuntary detention

*insert*

and treatment, care or support

---

**23 Treatment during detention**  
**Section 88 (1) (b) and (c), except note**

*substitute*

- (b) may subject the person to the minimum confinement or restraint that is necessary and reasonable to—
  - (i) prevent the person from causing harm to themselves or someone else; or
  - (ii) ensure that the person remains in custody; and
- (c) may subject the person to involuntary seclusion if satisfied that it is the only way in the circumstances to prevent the person from causing harm to themselves or someone else; and
- (d) must ensure that any treatment, care or support administered to the person is the minimum necessary to prevent any immediate and substantial risk of the person detained causing harm to themselves or someone else.

**24 New section 88 (4) and (5)**

*insert*

- (4) If a doctor believes on reasonable grounds that the detained person should be given medication for the treatment of the person's mental disorder or mental illness, the doctor may—
  - (a) approve the giving by appropriately trained people of medication prescribed by or under the authority of the doctor; and
  - (b) use, or authorise someone else to use, the force and assistance that is necessary and reasonable to give the medication (*forcible giving of medication*).

- (5) If the detained person is subjected to confinement, restraint, involuntary seclusion or forcible giving of medication, the person in charge of the facility must—
- (a) enter in the detained person’s record the fact of and the reasons for the confinement, restraint, involuntary seclusion or forcible giving of medication; and
  - (b) tell the public advocate in writing of the restraint, involuntary seclusion or forcible giving of medication; and
  - (c) keep a register of the restraint, involuntary seclusion or forcible giving of medication.

**25 Definitions—pt 7.1**  
**Section 93, definition of *relevant person*, paragraph (b)**

*substitute*

- (b) for a forensic community care order—a person who can make the statement required under section 94 (3) (a) for the application.

**26 Applications for forensic mental health orders—detainees etc**  
**New section 94 (1) (g)**

*insert*

- (g) a person covered by a bail order that includes a condition that the person accept supervision under the *Bail Act 1992*, section 25 (4) (e), section 25A or section 26 (2).



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**27**      **Role of chief psychiatrist—forensic psychiatric treatment order**  
**Section 103 (2), new note**

*insert*

*Note 1*    The power to make an instrument includes the power to amend or repeal the instrument (see [Legislation Act](#), s 46).

**28**      **Section 103 (8)**

*substitute*

- (8) The chief psychiatrist must, as soon as practicable after making a determination, give a copy of the determination to—
- (a) the people mentioned in subsection (6) (a); and
  - (b) the ACAT; and
  - (c) the public advocate.

**29**      **Action if forensic psychiatric treatment order no longer appropriate—no longer person in relation to whom ACAT could make order**  
**Section 105 (2)**

*substitute*

- (2) The chief psychiatrist must give written notice to the following (the *notified people*):
- (a) if the person has a carer—the carer;
  - (b) if the person has a nominated person—the nominated person;
  - (c) if the person is covered by a bail order that includes a condition that the person accept supervision under the [Bail Act 1992](#), section 25 (4) (e), section 25A or section 26 (2)—the director-general responsible for the supervision of the person under the [Bail Act 1992](#);

- (d) if the person is a detainee, a person on parole or licence, or a person serving a community-based sentence—the corrections director-general;
- (e) if the person is a young detainee or a young offender serving a community-based sentence—the CYP director-general;
- (f) if the person is a child—each person with parental responsibility for the person under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility).

**30 Section 105 (3) (b)**

*omit*

the carer or nominated person is

*substitute*

the notified people are

**31 Section 105 (3) (e)**

*omit*

tell the nominated person that the nominated person is

*substitute*

tell the other notified people that they are

**32 Action if forensic psychiatric treatment order no longer appropriate—no longer necessary to detain person  
Section 106 (2)**

*substitute*

- (2) The chief psychiatrist must give written notice to the following (the *notified people*):
  - (a) if the person has a carer—the carer;
  - (b) if the person has a nominated person—the nominated person;

- (c) if the person is covered by a bail order that includes a condition that the person accept supervision under the *Bail Act 1992*, section 25 (4) (e), section 25A or section 26 (2)—the director-general responsible for the supervision of the person under the *Bail Act 1992*;
- (d) if the person is a detainee, a person on parole or licence, or a person serving a community-based sentence—the corrections director-general;
- (e) if the person is a young detainee or a young offender serving a community-based sentence—the CYP director-general;
- (f) if the person is a child—each person with parental responsibility for the person under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility).

**33 Section 106 (3) (b)**

*omit*

the carer or nominated person is

*substitute*

the notified people are

**34 Section 106 (3) (e)**

*omit*

tell the nominated person that the nominated person is

*substitute*

tell the other notified people that they are

**35 Powers in relation to forensic psychiatric treatment order  
Section 107 (5) (b)**

*substitute*

- (b) tell the public advocate in writing of the restraint, involuntary seclusion or forcible giving of medication; and

**36 Content of forensic community care order  
Section 109 (1) (e)**

*substitute*

- (e) that the person must—
  - (i) live (but not be detained) at a stated approved community care facility or another stated place; or
  - (ii) be detained at a stated community care facility;

**37 Role of care coordinator—forensic community care order  
Section 110 (6)**

*substitute*

- (6) The care coordinator must, as soon as practicable after making a determination, give a copy of the determination to—
  - (a) the people mentioned in subsection (4) (a); and
  - (b) the ACAT; and
  - (c) the public advocate.

**38 Action if forensic community care order no longer appropriate—no longer person in relation to whom ACAT could make order  
Section 112 (2)**

*substitute*

- (2) The care coordinator must give written notice to the following (the *notified people*):
- (a) if the person has a carer—the carer;
  - (b) if the person has a nominated person—the nominated person;
  - (c) if the person is covered by a bail order that includes a condition that the person accept supervision under the *Bail Act 1992*, section 25 (4) (e), section 25A or section 26 (2)—the director-general responsible for the supervision of the person under the *Bail Act 1992*;
  - (d) if the person is a detainee, a person on parole or licence, or a person serving a community-based sentence—the corrections director-general;
  - (e) if the person is a young detainee or a young offender serving a community-based sentence—the CYP director-general;
  - (f) if the person is a child—each person with parental responsibility for the person under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility).

**39 Section 112 (3) (b)**

*omit*

the carer or nominated person is

*substitute*

the notified people are

**40 Section 112 (3) (e)**

*omit*

tell the nominated person that the nominated person is

*substitute*

tell the other notified people that they are

**41 Action if forensic community care order no longer appropriate—no longer necessary to detain person  
Section 113 (2)**

*substitute*

- (2) The care coordinator must give written notice to the following (the *notified people*):
- (a) if the person has a carer—the carer;
  - (b) if the person has a nominated person—the nominated person;
  - (c) if the person is covered by a bail order that includes a condition that the person accept supervision under the *Bail Act 1992*, section 25 (4) (e), section 25A or section 26 (2)—the director-general responsible for the supervision of the person under the *Bail Act 1992*;
  - (d) if the person is a detainee, a person on parole or licence, or a person serving a community-based sentence—the corrections director-general;
  - (e) if the person is a young detainee or a young offender serving a community-based sentence—the CYP director-general;
  - (f) if the person is a child—each person with parental responsibility for the person under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility).

**42 Section 113 (3) (b)**

*omit*

the carer or nominated person is

*substitute*

the notified people are

**43 Section 113 (3) (e)**

*omit*

tell the nominated person that the nominated person is

*substitute*

tell the other notified people that they are

**44 Powers in relation to forensic community care order  
Section 114 (5) (b)**

*substitute*

(b) tell the public advocate in writing of the restraint, involuntary seclusion or forcible giving of medication; and

**45 Grant of leave for person detained by ACAT  
Section 119 (3) (a)**

*substitute*

(a) if the person is subject to a corrections order—

(i) if the person is a detainee—obtain the agreement of the corrections director-general; or

(ii) if the person is a young detainee—obtain the agreement of the CYP director-general; or

- (iii) if the person is not a detainee or young detainee—consult the relevant director-general for the corrections order; and

**46 Section 119 (8) (c)**

*substitute*

- (c) if the person is subject to a corrections order—
  - (i) if the person is a detainee—the corrections director-general; or
  - (ii) if the person is a young detainee—the CYP director-general; or
  - (iii) if the person is not a detainee or young detainee—the relevant director-general for the corrections order.

**47 Revocation of leave granted by ACAT  
Section 120 (2) (c)**

*substitute*

- (c) if the person is subject to a corrections order—
  - (i) if the person is a detainee—the corrections director-general; or
  - (ii) if the person is a young detainee—the CYP director-general; or
  - (iii) if the person is not a detainee or young detainee—the relevant director-general for the corrections order.



**48 Section 120 (4) (c)**

*substitute*

- (c) if the person is subject to a corrections order—
  - (i) if the person is a detainee—the corrections director-general; or
  - (ii) if the person is a young detainee—the CYP director-general; or
  - (iii) if the person is not a detainee or young detainee—the relevant director-general for the corrections order.

**49 Grant of leave for person detained by relevant official  
Section 121 (3) (b)**

*substitute*

- (b) if the person is subject to a corrections order—
  - (i) if the person is a detainee—obtain the agreement of the corrections director-general; or
  - (ii) if the person is a young detainee—obtain the agreement of the CYP director-general; or
  - (iii) if the person is not a detainee or young detainee—consult the relevant director-general for the corrections order.

**50 Section 121 (8) (b)**

*substitute*

- (b) if the person is subject to a corrections order—
  - (i) if the person is a detainee—the corrections director-general; or
  - (ii) if the person is a young detainee—the CYP director-general; or

- (iii) if the person is not a detainee or young detainee—the relevant director-general for the corrections order.

**51 Leave in emergency or special circumstances  
New section 122 (2A)**

*insert*

- (2A) Before granting leave the relevant official must—
  - (a) if the person is a detainee—obtain the agreement of the corrections director-general; and
  - (b) if the person is a young detainee—obtain the agreement of the CYP director-general; and
  - (c) if the person is not a detainee or young detainee—consult the relevant director-general for the corrections order.

**52 Section 122 (4) (b), except note**

*substitute*

- (b) if the person is subject to a corrections order—
  - (i) if the person is a detainee—the corrections director-general; or
  - (ii) if the person is a young detainee—the CYP director-general; or
  - (iii) if the person is not a detainee or young detainee—the relevant director-general for the corrections order.

**53      Revocation of leave granted by relevant official  
Section 123 (2) (b)**

*substitute*

- (b) if the person is subject to a corrections order—
  - (i) if the person is a detainee—the corrections director-general; or
  - (ii) if the person is a young detainee—the CYP director-general; or
  - (iii) if the person is not a detainee or young detainee—the relevant director-general for the corrections order.

**54      Section 123 (4) (b)**

*substitute*

- (b) if the person is subject to a corrections order—
  - (i) if the person is a detainee—the corrections director-general; or
  - (ii) if the person is a young detainee—the CYP director-general; or
  - (iii) if the person is not a detainee or young detainee—the relevant director-general for the corrections order.

**55      Contravention of forensic mental health order—  
absconding from facility  
New section 125 (1A)**

*insert*

- (1A) The person in charge of the facility must immediately tell the police that the person has absconded.

**56 Section 126 heading**

*substitute*

**126 Review of forensic mental health order**

**57 Section 126 (8) (a)**

*before*

amend

*insert*

confirm,

**58 Disclosures to registered affected people  
Section 134 (4)**

*after 1st mention of*

child

*insert*

, or a person who was a child when the offence was committed or alleged to have been committed,

**59 Section 134 (4)**

*after 2nd mention of*

child

*insert*

or person

**60 Section 134 (7) (c)**

*after*

young person

*insert*

, or was a child or young person when the offence was committed or alleged to have been committed

**61 Meaning of *correctional patient*  
Section 135, new note**

*insert*

*Note* **Transfer direction** is defined in s 136 (3). Transfer directions for correctional patients are made by the corrections director-general or the CYP director-general. They can only be made for people for whom a mental health order or forensic mental health order cannot be made (see s 136 (1) (b)).

**62 Transfer to mental health facility  
Section 136 (1) (a)**

*after*

detainee

*insert*

or young detainee

**63 Section 136 (2) to (4)**

*substitute*

- (2) The chief psychiatrist may ask the corrections director-general or the CYP director general to direct that the detainee or young detainee be transferred from a correctional centre or detention place to a stated approved mental health facility, and be detained at the facility.

- (3) If the corrections director-general or the CYP director-general decides to make the direction requested, the direction (the *transfer direction*) must be made—
  - (a) for the corrections director-general—under the *Corrections Management Act 2007*, section 54 (Transfers to health facilities); and
  - (b) for the CYP director-general—under the *Children and Young People Act 2008*, section 109 (Transfers to health facilities).
- (4) Before making a transfer direction, the CYP director-general must, as far as practicable, consult each person with parental responsibility for the young detainee under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility).
- (5) The corrections director-general or the CYP director-general may, at the request of the chief psychiatrist and at any time before the transfer takes place, revoke the direction.

**64 Section 137 heading**

*substitute*

**137 Return to correctional centre or detention place unless direction to remain**

**65 Section 137 (1)**

*substitute*

- (1) A correctional patient must, within 7 days after the day the patient is transferred to an approved mental health facility under a transfer direction, be returned or transferred—
  - (a) if the patient is a detainee—to a correctional centre; or
  - (b) if the patient is a young detainee—to a detention place.

**66 Section 137 (2) (b)**

*after*

correctional centre

*insert*

or detention place

**67 Section 137 (3)**

*omit*

returned to the correctional centre

*substitute*

returned or transferred to the correctional centre or detention place

**68 Section 137 (3) (b)**

*after*

correctional centre

*insert*

or detention place

**69 Section 137 (3), note**

*substitute*

*Note* The corrections director-general and the CYP director-general may give a direction for removal and return of the person at any time (see [Corrections Management Act 2007](#), s 54 and [Children and Young People Act 2008](#), s 109).

**70 Release etc on change of status of correctional patient  
Section 138 (1) (a)**

*after*

corrections director-general

*insert*

or CYP director-general

**71 Section 138 (1), note**

*substitute*

*Note* The corrections director-general and the CYP director-general must tell the director-general of any change in a person's status as a detainee or young detainee (see [Corrections Management Act 2007](#), s 54A and [Children and Young People Act 2008](#), s 109A).

**72 ACAT may return people to correctional centre  
Section 139**

*after*

correctional centre

*insert*

or detention place

**73 Review of correctional patient awaiting transfer to mental  
health facility  
Section 140 (4)**

*omit*

, correctional centre or other place



**74**      **Review of correctional patient transferred to mental health facility**  
**Section 141 (3) (a) (iii)**

*after*

correctional centre

*insert*

or detention place

**75**      **Section 141 (3) (b)**

*omit*

or correctional centre

**76**      **Review of correctional patient detained at mental health facility**  
**New section 142 (2) (b) (iva)**

*insert*

(iva) the CYP director-general;

**77**      **Section 142 (4) (b)**

*omit*

any other facility or place

*substitute*

any other approved mental health facility

**78**      **Section 142 (5)**

*substitute*

- (5) On review, the ACAT may, as it considers appropriate, make an order in relation to the person's continued detention at, or treatment care or support in, an approved mental health facility.

**79 New section 142 (6) (c)**

*insert*

(c) the CYP director-general.

**80 New section 142A**

*in part 8.4, insert*

**142A Definitions—pt 8.4**

In this part:

*health director-general* means the director-general responsible for this chapter.

*relevant director-general* means—

- (a) for a correctional patient who is taken to be in the custody of the director-general under chapter 8A (Transfer of custody—secure mental health facility)—the health director-general; and
- (b) for any other correctional patient—
  - (i) if the patient is a detainee—the corrections director-general; and
  - (ii) if the patient is a young detainee—the CYP director-general.

**81 Grant of leave for correctional patients  
Section 143 (1)**

*omit*

The director-general

*substitute*

The relevant director-general

**82 New section 143 (1A)**

*insert*

- (1A) Before granting leave, the relevant director-general must consult—
- (a) the chief psychiatrist; and
  - (b) if the relevant director-general is the health director-general—  
the corrections director-general or the CYP director-general.

**83 Section 143 (4)**

*omit*

**84 Revocation of leave for correctional patients  
Section 144 (1)**

*omit*

The director-general

*substitute*

The relevant director-general

**85 New section 144 (1A)**

*insert*

- (1A) Before revoking a grant of leave under subsection (1), the relevant director-general must consult—
- (a) the chief psychiatrist; and
  - (b) if the relevant director-general is the health director-general—  
the corrections director-general or the CYP director-general.

**86**      **New chapter 8A**

*insert*

## **Chapter 8A      Transfer of custody—secure mental health facility**

### **144A      Transfer of custody if person admitted to secure mental health facility**

- (1) A person is taken to be in the custody of the director-general if the person is admitted to a secure mental health facility under—
  - (a) the *Children and Young People Act 2008*, section 109 (Transfers to health facilities); or
  - (b) the *Corrections Management Act 2007*, section 54 (Transfers to health facilities); or
  - (c) part 8.2 (Transfer of correctional patients).

*Note*      See also the *Children and Young People Act 2008*, s 245 and the *Corrections Management Act 2007*, s 217.

- (2) However, a person admitted to a secure mental health facility is taken to be in the custody of the director-general only until the person is discharged from the facility.
- (3) If custody of a person is transferred to the director-general, the director-general must—
  - (a) immediately give written notice of the transfer of custody to—
    - (i) if the person is a detainee—the corrections director-general; and
    - (ii) if the person is a young detainee—the CYP director-general; and

- 
- (b) as soon as practicable give written notice of the transfer of custody to the following:
- (i) the ACAT;
  - (ii) the public advocate;
  - (iii) the person;
  - (iv) if the person has a nominated person—the nominated person;
  - (v) if the person is a child—each person with parental responsibility for the child under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility).
- (4) The director-general must, as soon as practicable, give written notice of an intention to discharge a person from a secure mental health facility to the following people:
- (a) if the person is a detainee—the corrections director-general;
  - (b) if the person is a young detainee—the CYP director-general.
- (5) A person who takes a detainee or young detainee to a secure mental health facility must give the director-general a written statement containing any of the following relevant information:
- (a) the nature and extent of any force, restraint, involuntary seclusion or forcible giving of medication used when, or in relation to, taking the person to the facility;
  - (b) anything else that happened when, or in relation to, taking the person to the facility that may have an effect on the person's physical or mental health.

**Examples—par (b)**

- 1 the person was subject to threat of violence from another person
- 2 a package of white powder fell out of the person's pocket

- 3 the person was in an agitated state and hit their head against the side of the transport vehicle

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (6) The director-general must—
- (a) enter the statement in the person’s record; and
  - (b) keep a register of any restraint, involuntary seclusion or forcible giving of medication included in the statement; and
  - (c) tell the public advocate, in writing, of any restraint, involuntary seclusion or forcible giving of medication included in the statement.

- (7) In this section:

***admitted*** to a secure mental health facility includes transferred to the facility.

**Example**

A person is transferred to a secure mental health facility from another unit at the Canberra Hospital.

**144B Taking person to appear before court**

- (1) This section applies if a person taken to be in the custody of the director-general is required to appear before a court.
- (2) The corrections director-general or the CYP director-general must tell the director-general about the requirement as soon as practicable after becoming aware of it.
- (3) When the person is transferred from a secure mental health facility for the purpose of attending court, the person is taken to be in the custody of—
  - (a) if the person is a detainee—the corrections director-general; and

- (b) if the person is a young detainee—the CYP director-general.
- (4) When the person is returned to the secure mental health facility, the person is taken to be in the custody of the director-general.

#### **144C Release etc on change of status of person**

- (1) This section applies if—
  - (a) the director-general is told by the corrections director-general, the CYP director-general or otherwise becomes aware of any of the following in relation to a person who is taken to be in the director-general’s custody:
    - (i) the person’s sentence of imprisonment ends;
    - (ii) the person is released on parole;
    - (iii) the person is otherwise released on the order of a court;
    - (iv) the relevant charge against the person is dismissed;
    - (v) the director of public prosecutions notifies the ACAT or a court that the relevant charge against the person will not proceed; and
  - (b) the person is not required to be detained under another court order.
- (2) The director-general must—
  - (a) at the person’s request, continue the treatment, care or support in an approved mental health facility; or
  - (b) if the person is a child who does not have decision-making capacity to make the request—at the request of a person with parental responsibility for the person under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility), continue the treatment, care or support in an approved mental health facility; or

- (c) make any other decision that the director-general may make in relation to the person under this Act; or
- (d) release the person from the secure mental health facility.

*Note* For principles that must be taken into account when exercising a function under this Act, see s 6.

- (3) The director-general must give written notice of a decision made under subsection (2) to the following:
  - (a) the ACAT;
  - (b) the public advocate;
  - (c) the person;
  - (d) if the person has a nominated person—the nominated person;
  - (e) if the person is a child—each person with parental responsibility for the child under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility);
  - (f) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian and the ACAT;
  - (g) if the person has an attorney under the *Powers of Attorney Act 2006*—the attorney.

**144D Power to apprehend if person escapes from secure mental health facility**

- (1) This section applies if a person taken to be in the custody of the director-general escapes from a secure mental health facility.
- (2) The person in charge of the secure mental health facility must immediately tell the police that the person has escaped.
- (3) The person in charge of the secure mental health facility must also give written notice of the person escaping to the following:
  - (a) the ACAT;



- (b) the public advocate;
  - (c) if the person has a nominated person—the nominated person;
  - (d) if the person is a child—each person with parental responsibility for the child under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility);
  - (e) if the person is a young detainee—the CYP director-general;
  - (f) if the person is a detainee—the corrections director-general;
  - (g) if there is a registered affected person in relation to the person—the director-general responsible for the *ACT Civil and Administrative Tribunal Act 2008*.
- (4) A police officer, authorised ambulance paramedic, mental health officer or doctor may apprehend the person and return the person to the secure mental health facility.

*Note* See s 263 (Powers of entry and apprehension) and s 264 (Powers of search and seizure).

- (5) A police officer, authorised ambulance paramedic, mental health officer or doctor who apprehends and returns the person to a secure mental health facility must give the director-general a written statement containing any of the following relevant information:
- (a) the nature and extent of the force or assistance used to enter any premises, or to apprehend the person and take the person to the facility;
  - (b) the nature and extent of any restraint, involuntary seclusion or forcible giving of medication used when apprehending the person or taking the person to the facility;

- (c) anything else that happened when the person was being apprehended and taken to the facility that may have an effect on the person's physical or mental health.

**Examples—par (c)**

- 1 the person was subject to threat of violence from another person
- 2 a package of white powder fell out of the person's pocket
- 3 the person was in an agitated state and hit their head against the side of the transport vehicle

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (6) The director-general must—
  - (a) enter the statement in the person's record; and
  - (b) keep a register of any restraint, involuntary seclusion or forcible giving of medication included in the statement; and
  - (c) tell the public advocate, in writing, of any restraint, involuntary seclusion or forcible giving of medication included in the statement.

**144E Transfers to health facilities**

- (1) The director-general may direct that a person taken to be in the director-general's custody be transferred to a health facility if the director-general believes on reasonable grounds that it is necessary or prudent for the person to receive health services at the facility.
- (2) The director-general must, if practicable, have regard to the advice of the person's treating doctor when considering whether to make a direction under subsection (1).
- (3) The director-general may direct an escort officer to escort the person to or from the health facility, or while at the facility.

- 
- (4) The person may be discharged from the health facility only if—
- (a) the health practitioner in charge of the person’s care approves the discharge; or
  - (b) the director-general directs that the person be removed from the facility.

**Example—par (b)**

where the person is a danger to the safety of people at the facility

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (5) The director-general must have regard to the health of the person when considering whether to make a direction under subsection (4).
- (6) The director-general may give a direction for ensuring that a person discharged from a health facility under subsection (4) is returned to the secure mental health facility.
- (7) In this section:

*escort officer*—see section 144F (Escort officers).

*health facility* means a hospital or other facility where health services are provided.

## **144F Escort officers**

- (1) The director-general may direct an escort officer to escort a person who is taken to be in the director-general’s custody to or from a secure mental health facility, other than to or from a court.

*Note* For transfers to or from a court, see s 144B.

- (2) To remove any doubt—
  - (a) the escort officer is authorised to have custody of the person for the purposes of escorting the person; and

- (b) the person is also taken to be in the custody of the director-general; and
  - (c) this section is additional to, and does not limit, any other provision relating to the escorting of a person under a territory law or a law of the Commonwealth, a State or another territory.
- (3) In this section:

*escort officer*, in relation to a person, means—

- (a) an authorised health practitioner under the *Mental Health (Secure Facilities) Act 2016*; or
- (b) an authorised person under the *Mental Health (Secure Facilities) Act 2016*; or
- (c) a police officer; or
- (d) a corrections officer if the corrections director-general has agreed to the officer having the function of escorting the person under this chapter; or
- (e) a youth detention officer if the CYP director-general has agreed to the officer having the function of escorting the person under this chapter.

*youth detention officer*—see the *Children and Young People Act 2008*, section 96.

#### **144G Crimes Act escape provisions**

A person who is taken to be in the custody of the director-general under this chapter is taken, for the *Crimes Act 1900*, part 7 (Escape provisions), to be in lawful custody in relation to an offence.

**87 Application for approval  
Section 169 (1) and (2)**

*substitute*

- (1) A doctor may apply to the chief psychiatrist for approval for a stated neurosurgeon to perform psychiatric surgery on a person.
- (2) The doctor who makes the application must be a psychiatrist.

**88 Application to be considered by committee  
Section 170 (2) (c) (ii)**

*substitute*

- (ii) if the committee recommends approval for the surgery—
  - (A) the conditions (if any) to which the approval should be subject; and
  - (B) a statement that the committee is satisfied that the neurosurgeon has the necessary qualifications and experience to perform the surgery;

**89 Consent of Supreme Court  
Section 173 (1) and (2), except note**

*substitute*

- (1) This section applies if a doctor proposes that psychiatric surgery be performed on a person but the person does not have decision-making capacity to consent or an advance consent direction consenting to the surgery.
- (2) The doctor and the neurosurgeon who is to perform the surgery may jointly apply to the Supreme Court for an order consenting to the performance of psychiatric surgery on the person.

**90**      **When ACAT may be constituted by presidential member**  
**New section 185 (1) (ca)**

*insert*

(ca) a review of involuntary detention under section 85 (5);

**91**      **When ACAT must be constituted by more members**  
**Section 186 (1) (b)**

*omit*

section 79 (Review, amendment or revocation of mental health order)

*substitute*

section 79 (Review of mental health order)

**92**      **Section 186 (1) (f)**

*omit*

section 126 (Review, amendment or revocation of forensic mental health order)

*substitute*

section 126 (Review of forensic mental health order)

**93**      **Notice of hearing**  
**Section 188 (3) (b)**

*omit*

section 79 (3) (Review, amendment or revocation of mental health order)

*substitute*

section 79 (3) (Review of mental health order)

**94 Section 188 (3) (d)**

*omit*

section 126 (5) (Review, amendment or revocation of forensic mental health order)

*substitute*

section 126 (5) (Review of forensic mental health order)

**95 Membership of mental health advisory council  
Section 240 (2) (c)**

*after*

or expertise in

*insert*

primary

**96 Powers of entry and apprehension  
New section 263 (1) (ia)**

*insert*

(ia) section 144D (Power to apprehend if person escapes from secure mental health facility);

**97 Powers of search and seizure  
New section 264 (1) (na)**

*insert*

(na) section 144D (Power to apprehend if person escapes from secure mental health facility);

**98 Dictionary, new definition of *health director-general***

*insert*

*health director-general*, for part 8.4 (Leave for correctional patients)—see section 142A.

**99 Dictionary, definition of *psychiatrist*, paragraph (b)**

*substitute*

(b) meets the requirements prescribed by regulation.

**100 Dictionary, new definition of *relevant director-general***

*insert*

*relevant director-general*, for part 8.4 (Leave for correctional patients)—see section 142A.

**101 Dictionary, new definition of *secure mental health facility***

*insert*

*secure mental health facility*—see the [Mental Health \(Secure Facilities\) Act 2016](#), section 7.



## **Schedule 1      Consequential amendments**

### **Part 1.1              Children and Young People Act 2008**

#### **[1.1]      Section 109 (3)**

*substitute*

- (3) The director-general may direct an escort officer to escort the young detainee—
- (a) to or from the health facility; or
  - (b) for a facility other than a secure mental health facility—while at the facility.

#### **[1.2]      New section 109A**

*in division 5.1.3, insert*

#### **109A      Transfer to mental health facility—notice of change in status**

- (1) This section applies if the director-general has made a direction under section 109 for the transfer of a young detainee from a detention place to an approved mental health facility or approved community care facility.
- (2) The director-general must tell the director-general responsible for the *Mental Health Act 2015* in writing about any change in the young detainee's status as a young detainee.

##### **Examples**

- 1 the person's sentence of imprisonment ends
- 2 the person is released on parole

3 the person is otherwise released from detention

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

(3) In this section:

*approved community care facility*—see the [Mental Health Act 2015](#), dictionary.

*approved mental health facility*—see the [Mental Health Act 2015](#), dictionary.

### **[1.3] Section 245 (3) and note**

*substitute*

(3) However—

(a) if a young detainee is transferred to a correctional centre under a direction under section 111 (Transfers to correctional centres—under 21 years old)—the young detainee is taken to be in the director-general’s custody only until the young detainee is admitted to the correctional centre; and

*Note* See s 111 (6).

(b) if a young detainee is transferred to a secure mental health facility under a direction under section 109 (Transfers to health facilities)—the young detainee is taken to be in the director-general’s custody only—

(i) until the young detainee is admitted to the facility; and

(ii) if the young detainee is transferred from a secure mental health facility under the [Mental Health Act 2015](#), section 144B (Taking person to appear before court)—from when the young detainee is transferred until when the young detainee is returned; and

- (iii) if the young detainee is returned to a detention place—  
when the young detainee is discharged from the facility.

*Note* See the [Mental Health Act 2015](#), s 144A (Transfer of custody if person admitted to secure mental health facility) for custody while at a secure mental health facility and s 144B (Taking person to appear before court) for custody when attending court.

- (4) In this section:

***admitted*** to a secure mental health facility includes transferred to the facility.

**Example**

A person is transferred to a secure mental health facility at Canberra Hospital from another unit at the hospital.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

**[1.4] Dictionary, new definition of *secure mental health facility***

*insert*

***secure mental health facility***—see the [Mental Health \(Secure Facilities\) Act 2016](#), section 7.

## **Part 1.2 Corrections Management Act 2007**

**[1.5] Section 54 (3)**

*substitute*

- (3) The director-general may direct an escort officer to escort the detainee—
- (a) to or from the health facility; or

- (b) for a facility other than the secure mental health facility—  
while at the facility.

**[1.6] Section 54A heading**

*substitute*

**54A Transfer to mental health facility—notice of change in status**

**[1.7] New section 217 (3) and (4)**

*insert*

- (3) However, a detainee transferred to a secure mental health facility under a direction under section 54 (Transfers to health facilities) is taken to be in the director-general's custody only—
- (a) until the detainee is admitted to the facility; and
  - (b) if the detainee is transferred from a secure mental health facility under the *Mental Health Act 2015*, section 144B (Taking person to appear before court)—from when the detainee is transferred until when the detainee is returned; and
  - (c) if the detainee is returned to a correctional centre—when the detainee is discharged from the facility.

*Note* See the *Mental Health Act 2015*, s 144A (Transfer of custody if person admitted to secure mental health facility) for custody while at a secure mental health facility and s 144B (Taking person to appear before court) for custody when attending court.

(4) In this section:

*admitted* to a secure mental health facility includes transferred to the facility.

**Example**

A person is transferred to a secure mental health facility from another unit at the Canberra Hospital.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

**[1.8] Dictionary, new definition of *secure mental health facility***

*insert*

*secure mental health facility*—see the [Mental Health \(Secure Facilities\) Act 2016](#), section 7.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 5 May 2016.

**2 Notification**

Notified under the [Legislation Act](#) on 20 June 2016.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Mental Health Amendment Bill 2016, which was passed by the Legislative Assembly on 9 June 2016.

Clerk of the Legislative Assembly

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