

2016

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Minister for Health)

## Mental Health Amendment Bill 2016

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2016

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Minister for Health)

## Mental Health Amendment Bill 2016

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### A Bill for

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 **1 Name of Act**

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

3 **2 Commencement**

4 (1) This Act (other than the following provisions) commences on the  
5 day after its notification day:

- 6 • section 86
- 7 • section 96
- 8 • section 97
- 9 • section 101
- 10 • schedule 1.

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

13 (2) The provisions mentioned in subsection (1) commence on the later  
14 of—

- 15 (a) the commencement of the *Mental Health (Secure Facilities)*  
16 *Act 2016*, section 3; and
- 17 (b) the commencement of this Act, section 3.

18 **3 Legislation amended**

19 This Act amends the *Mental Health Act 2015*.

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

- 21 • [Children and Young People Act 2008](#)
- 22 • [Corrections Management Act 2007](#).



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

3 *after*

4 interests

5 *insert*

6 , views and wishes

7 **5 Entering into advance agreement**  
8 **New section 26 (5) (b) (iia) to (iid)**

9 *insert*

10 (iia) if there is a person who is likely to provide practical help  
11 under the agreement and the person consents to that  
12 person being given a copy—that person; and

13 (iib) if the person has a carer and the person consents to the  
14 carer being given a copy—the carer; and

15 (iic) if the person has a guardian under the *Guardianship and*  
16 *Management of Property Act 1991*—the guardian and the  
17 ACAT; and

18 (iid) if the person has an attorney under the *Powers of*  
19 *Attorney Act 2006*—the attorney; and

20 **6 Making advance consent direction**  
21 **New section 27 (6) (b) (iia)**

22 *insert*

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

1 **7 Ending advance agreement or advance consent direction**  
2 **Section 29 (4) (a) (ii) and (iii)**

3 *substitute*

4 (ii) is given to—

5 (A) any member of the person’s treating team who does  
6 not have access to the person’s record; and

7 (B) if the person has a nominated person—the  
8 nominated person; and

9 (C) if there is a person who was likely to provide  
10 practical help under the agreement and the person  
11 consents to that person being given a copy—that  
12 person; and

13 (D) if the person has a carer and the person consents to  
14 the carer being given a copy—the carer; and

15 (E) if the person has a guardian under the *Guardianship*  
16 *and Management of Property Act 1991*—the  
17 guardian and the ACAT; and

18 (F) if the person has an attorney under the *Powers of*  
19 *Attorney Act 2006*—the attorney; and

20 **8 Assessment order**  
21 **Section 37 (b)**

22 *omit*

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

25 *substitute*

26 section 79 (Review of mental health order)

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

3 *substitute*

4 (b) state the approved mental health facility or other place at which  
5 the assessment is to be conducted and, if appropriate, the  
6 person who is to conduct the assessment; and

7 (c) if the assessment is to be conducted at an approved mental  
8 health facility—

9 (i) direct the person to be assessed to attend the facility and,  
10 if necessary and reasonable, stay at the facility until the  
11 assessment has been conducted; and

12 (ii) direct the person in charge of the facility to—

13 (A) if appropriate, admit the person to be assessed to the  
14 facility to conduct the assessment; and

15 (B) if necessary and reasonable, detain the person at the  
16 facility until the assessment has been conducted;  
17 and

18 (C) provide the assistance that is necessary and  
19 reasonable to conduct the assessment.

20 **10 Time for conducting assessment**  
21 **New section 42 (1) (c)**

22 *insert*

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

- 1 **11 Person to be assessed to be told about order**  
2 **Section 47 (1) and (2)**
- 3 *substitute*
- 4 (1) This section applies if an assessment is to be conducted at an  
5 approved mental health facility or other place under an assessment  
6 order.
- 7 (2) The person in charge of the approved mental health facility or other  
8 place must, before the assessment is conducted, ensure that the  
9 person to be assessed is told about the assessment order, including  
10 the process of assessment and possible outcomes of an assessment,  
11 in a way that the person is most likely to understand.
- 12 **12 Copy of assessment**  
13 **Section 48 (1) and (2)**
- 14 *after*
- 15 mental health facility
- 16 *insert*
- 17 or other place
- 18 **13 Definitions—ch 5**  
19 **Section 50, definition of *relevant person*, paragraph (b)**
- 20 *substitute*
- 21 (b) for a community care order—a person who can make the  
22 statement required under section 51 (3) (a) for the application.

- 1 **14** **Psychiatric treatment order**  
2 **Section 58 (2) (b) (i)**
- 3 *omit*
- 4 treatment;
- 5 *substitute*
- 6 treatment, care or support;
- 7 **15** **Role of chief psychiatrist—psychiatric treatment order**  
8 **Section 62 (2), new note**
- 9 *insert*
- 10 *Note 1* The power to make an instrument includes the power to amend or repeal  
11 the instrument (see [Legislation Act](#), s 46).
- 12 **16** **Powers in relation to psychiatric treatment order**  
13 **Section 65 (5) (b)**
- 14 *substitute*
- 15 (b) tell the public advocate in writing of the restraint, involuntary  
16 seclusion or forcible giving of medication; and
- 17 **17** **Powers in relation to community care order**  
18 **Section 73 (5) (b)**
- 19 *substitute*
- 20 (b) tell the public advocate in writing of the restraint, involuntary  
21 seclusion or forcible giving of medication; and
- 22 **18** **Section 79 heading**
- 23 *substitute*
- 24 **79** **Review of mental health order**

1 **19 Section 79 (6) (a)**

2 *before*

3 amend

4 *insert*

5 confirm,

6 **20 Statement of action taken**  
7 **New section 83 (2) (aa)**

8 *insert*

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

12 **21 Initial examination at approved mental health facility**  
13 **Section 84 (4) (b)**

14 *substitute*

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

18 **22 Authorisation of involuntary detention**  
19 **Section 85 (1)**

20 *after*

21 involuntary detention

22 *insert*

23 and treatment, care or support

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

3 *substitute*

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

16 **24 New section 88 (4) and (5)**

17 *insert*

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

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

11 **25 Definitions—pt 7.1**  
12 **Section 93, definition of *relevant person*, paragraph (b)**

13 *substitute*

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

17 **26 Applications for forensic mental health orders—detainees**  
18 **etc**  
19 **New section 94 (1) (g)**

20 *insert*

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



1 **27** **Role of chief psychiatrist—forensic psychiatric treatment**  
2 **order**  
3 **Section 103 (2), new note**

4 *insert*

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

7 **28** **Section 103 (8)**

8 *substitute*

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

14 **29** **Action if forensic psychiatric treatment order no longer**  
15 **appropriate—no longer person in relation to whom ACAT**  
16 **could make order**  
17 **Section 105 (2)**

18 *substitute*

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

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

9 **30 Section 105 (3) (b)**

10 *omit*  
11 the carer or nominated person is  
12 *substitute*  
13 the notified people are

14 **31 Section 105 (3) (e)**

15 *omit*  
16 tell the nominated person that the nominated person is  
17 *substitute*  
18 tell the other notified people that they are

19 **32 Action if forensic psychiatric treatment order no longer**  
20 **appropriate—no longer necessary to detain person**  
21 **Section 106 (2)**

22 *substitute*  
23 (2) The chief psychiatrist must give written notice to the following  
24 (the *notified people*):  
25 (a) if the person has a carer—the carer;  
26 (b) if the person has a nominated person—the nominated person;

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

14 **33 Section 106 (3) (b)**

15 *omit*  
16 the carer or nominated person is  
17 *substitute*  
18 the notified people are

19 **34 Section 106 (3) (e)**

20 *omit*  
21 tell the nominated person that the nominated person is  
22 *substitute*  
23 tell the other notified people that they are

1 **35 Powers in relation to forensic psychiatric treatment order**  
2 **Section 107 (5) (b)**

3 *substitute*

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

6 **36 Content of forensic community care order**  
7 **Section 109 (1) (e)**

8 *substitute*

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

13 **37 Role of care coordinator—forensic community care order**  
14 **Section 110 (6)**

15 *substitute*

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

1 **38** **Action if forensic community care order no longer**  
 2 **appropriate—no longer person in relation to whom ACAT**  
 3 **could make order**  
 4 **Section 112 (2)**

5 *substitute*

6 (2) The care coordinator must give written notice to the following  
 7 (the *notified people*):

- 8 (a) if the person has a carer—the carer;
- 9 (b) if the person has a nominated person—the nominated person;
- 10 (c) if the person is covered by a bail order that includes a condition  
 11 that the person accept supervision under the *Bail Act 1992*,  
 12 section 25 (4) (e), section 25A or section 26 (2)—the  
 13 director-general responsible for the supervision of the person  
 14 under the *Bail Act 1992*;
- 15 (d) if the person is a detainee, a person on parole or licence, or a  
 16 person serving a community-based sentence—the corrections  
 17 director-general;
- 18 (e) if the person is a young detainee or a young offender serving a  
 19 community-based sentence—the CYP director-general;
- 20 (f) if the person is a child—each person with parental  
 21 responsibility for the person under the *Children and Young*  
 22 *People Act 2008*, division 1.3.2 (Parental responsibility).

23 **39** **Section 112 (3) (b)**

24 *omit*

25 the carer or nominated person is

26 *substitute*

27 the notified people are

1 **40 Section 112 (3) (e)**

2 *omit*

3 tell the nominated person that the nominated person is

4 *substitute*

5 tell the other notified people that they are

6 **41 Action if forensic community care order no longer**  
7 **appropriate—no longer necessary to detain person**  
8 **Section 113 (2)**

9 *substitute*

10 (2) The care coordinator must give written notice to the following  
11 (the *notified people*):

12 (a) if the person has a carer—the carer;

13 (b) if the person has a nominated person—the nominated person;

14 (c) if the person is covered by a bail order that includes a condition  
15 that the person accept supervision under the *Bail Act 1992*,  
16 section 25 (4) (e), section 25A or section 26 (2)—the  
17 director-general responsible for the supervision of the person  
18 under the *Bail Act 1992*;

19 (d) if the person is a detainee, a person on parole or licence, or a  
20 person serving a community-based sentence—the corrections  
21 director-general;

22 (e) if the person is a young detainee or a young offender serving a  
23 community-based sentence—the CYP director-general;

24 (f) if the person is a child—each person with parental  
25 responsibility for the person under the *Children and Young*  
26 *People Act 2008*, division 1.3.2 (Parental responsibility).

1 **42 Section 113 (3) (b)**

2 *omit*  
3 the carer or nominated person is  
4 *substitute*  
5 the notified people are

6 **43 Section 113 (3) (e)**

7 *omit*  
8 tell the nominated person that the nominated person is  
9 *substitute*  
10 tell the other notified people that they are

11 **44 Powers in relation to forensic community care order**  
12 **Section 114 (5) (b)**

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

16 **45 Grant of leave for person detained by ACAT**  
17 **Section 119 (3) (a)**

18 *substitute*  
19 (a) if the person is subject to a corrections order—  
20 (i) if the person is a detainee—obtain the agreement of the  
21 corrections director-general; or  
22 (ii) if the person is a young detainee—obtain the agreement  
23 of the CYP director-general; or

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

4 **46 Section 119 (8) (c)**

5 *substitute*

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

13 **47 Revocation of leave granted by ACAT**  
14 **Section 120 (2) (c)**

15 *substitute*

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



1 **48 Section 120 (4) (c)**

2 *substitute*

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

4 (i) if the person is a detainee—the corrections  
5 director-general; or

6 (ii) if the person is a young detainee—the CYP  
7 director-general; or

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

10 **49 Grant of leave for person detained by relevant official**  
11 **Section 121 (3) (b)**

12 *substitute*

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

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

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

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

20 **50 Section 121 (8) (b)**

21 *substitute*

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

23 (i) if the person is a detainee—the corrections  
24 director-general; or

25 (ii) if the person is a young detainee—the CYP  
26 director-general; or

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

3 **51 Leave in emergency or special circumstances**  
4 **New section 122 (2A)**

5 *insert*

- 6 (2A) Before granting leave the relevant official must—  
7 (a) if the person is a detainee—obtain the agreement of the  
8 corrections director-general; and  
9 (b) if the person is a young detainee—obtain the agreement of the  
10 CYP director-general; and  
11 (c) if the person is not a detainee or young detainee—consult the  
12 relevant director-general for the corrections order.

13 **52 Section 122 (4) (b), except note**

14 *substitute*

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

1 **53 Revocation of leave granted by relevant official**  
2 **Section 123 (2) (b)**

3 *substitute*

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

5 (i) if the person is a detainee—the corrections  
6 director-general; or

7 (ii) if the person is a young detainee—the CYP  
8 director-general; or

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

11 **54 Section 123 (4) (b)**

12 *substitute*

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

14 (i) if the person is a detainee—the corrections  
15 director-general; or

16 (ii) if the person is a young detainee—the CYP  
17 director-general; or

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

20 **55 Contravention of forensic mental health order—**  
21 **absconding from facility**  
22 **New section 125 (1A)**

23 *insert*

24 (1A) The person in charge of the facility must immediately tell the police  
25 that the person has absconded.

- 1 **56 Section 126 heading**
- 2 *substitute*
- 3 **126 Review of forensic mental health order**
- 4 **57 Section 126 (8) (a)**
- 5 *before*
- 6 amend
- 7 *insert*
- 8 confirm,
- 9 **58 Disclosures to registered affected people**
- 10 **Section 134 (4)**
- 11 *after 1st mention of*
- 12 child
- 13 *insert*
- 14 , or a person who was a child when the offence was committed or
- 15 alleged to have been committed,
- 16 **59 Section 134 (4)**
- 17 *after 2nd mention of*
- 18 child
- 19 *insert*
- 20 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.

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

16 **64 Section 137 heading**

17 *substitute*

18 **137 Return to correctional centre or detention place unless**  
19 **direction to remain**

20 **65 Section 137 (1)**

21 *substitute*

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

1 **66 Section 137 (2) (b)**

2 *after*  
3 correctional centre  
4 *insert*  
5 or detention place

6 **67 Section 137 (3)**

7 *omit*  
8 returned to the correctional centre  
9 *substitute*  
10 returned or transferred to the correctional centre or detention place

11 **68 Section 137 (3) (b)**

12 *after*  
13 correctional centre  
14 *insert*  
15 or detention place

16 **69 Section 137 (3), note**

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

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

3 *after*  
4 corrections director-general  
5 *insert*  
6 or CYP director-general

7 **71 Section 138 (1), note**

8 *substitute*

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

13 **72 ACAT may return people to correctional centre**  
14 **Section 139**

15 *after*  
16 correctional centre  
17 *insert*  
18 or detention place

19 **73 Review of correctional patient awaiting transfer to mental**  
20 **health facility**  
21 **Section 140 (4)**

22 *omit*  
23 , correctional centre or other place



- 1 **74** **Review of correctional patient transferred to mental**  
2 **health facility**  
3 **Section 141 (3) (a) (iii)**
- 4 *after*  
5 correctional centre  
6 *insert*  
7 or detention place
- 8 **75** **Section 141 (3) (b)**
- 9 *omit*  
10 or correctional centre
- 11 **76** **Review of correctional patient detained at mental health**  
12 **facility**  
13 **New section 142 (2) (b) (iva)**
- 14 *insert*  
15 (iva) the CYP director-general;
- 16 **77** **Section 142 (4) (b)**
- 17 *omit*  
18 any other facility or place  
19 *substitute*  
20 any other approved mental health facility
- 21 **78** **Section 142 (5)**
- 22 *substitute*  
23 (5) On review, the ACAT may, as it considers appropriate, make an  
24 order in relation to the person's continued detention at, or treatment  
25 care or support in, an approved mental health facility.

1 **79 New section 142 (6) (c)**

2 *insert*

3 (c) the CYP director-general.

4 **80 New section 142A**

5 *in part 8.4, insert*

6 **142A Definitions—pt 8.4**

7 In this part:

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

10 *relevant director-general* means—

11 (a) for a correctional patient who is taken to be in the custody of  
12 the director-general under chapter 8A (Transfer of custody—  
13 secure mental health facility)—the health director-general; and

14 (b) for any other correctional patient—

15 (i) if the patient is a detainee—the corrections  
16 director-general; and

17 (ii) if the patient is a young detainee—the CYP  
18 director-general.

19 **81 Grant of leave for correctional patients**  
20 **Section 143 (1)**

21 *omit*

22 The director-general

23 *substitute*

24 The relevant director-general

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

2 *insert*

3 (1A) Before granting leave, the relevant director-general must consult—

4 (a) the chief psychiatrist; and

5 (b) if the relevant director-general is the health director-general—  
6 the corrections director-general or the CYP director-general.

7 **83 Section 143 (4)**

8 *omit*

9 **84 Revocation of leave for correctional patients**  
10 **Section 144 (1)**

11 *omit*

12 The director-general

13 *substitute*

14 The relevant director-general

15 **85 New section 144 (1A)**

16 *insert*

17 (1A) Before revoking a grant of leave under subsection (1), the relevant  
18 director-general must consult—

19 (a) the chief psychiatrist; and

20 (b) if the relevant director-general is the health director-general—  
21 the corrections director-general or the CYP director-general.

1 **86** **New chapter 8A**

2 *insert*

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

5 **144A** **Transfer of custody if person admitted to secure mental**  
6 **health facility**

7 (1) A person is taken to be in the custody of the director-general if the  
8 person is admitted to a secure mental health facility under—

9 (a) the *Children and Young People Act 2008*, section 109  
10 (Transfers to health facilities); or

11 (b) the *Corrections Management Act 2007*, section 54 (Transfers  
12 to health facilities); or

13 (c) part 8.2 (Transfer of correctional patients).

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

16 (2) However, a person admitted to a secure mental health facility is  
17 taken to be in the custody of the director-general only until the  
18 person is discharged from the facility.

19 (3) If custody of a person is transferred to the director-general, the  
20 director-general must—

21 (a) immediately give written notice of the transfer of custody to—

22 (i) if the person is a detainee—the corrections  
23 director-general; and

24 (ii) if the person is a young detainee—the CYP  
25 director-general; and

- 1 (b) as soon as practicable give written notice of the transfer of  
2 custody to the following:
- 3 (i) the ACAT;
- 4 (ii) the public advocate;
- 5 (iii) the person;
- 6 (iv) if the person has a nominated person—the nominated  
7 person;
- 8 (v) if the person is a child—each person with parental  
9 responsibility for the child under the *Children and Young  
10 People Act 2008*, division 1.3.2 (Parental responsibility).
- 11 (4) The director-general must, as soon as practicable, give written  
12 notice of an intention to discharge a person from a secure mental  
13 health facility to the following people:
- 14 (a) if the person is a detainee—the corrections director-general;
- 15 (b) if the person is a young detainee—the CYP director-general.
- 16 (5) A person who takes a detainee or young detainee to a secure mental  
17 health facility must give the director-general a written statement  
18 containing any of the following relevant information:
- 19 (a) the nature and extent of any force, restraint, involuntary  
20 seclusion or forcible giving of medication used when, or in  
21 relation to, taking the person to the facility;
- 22 (b) anything else that happened when, or in relation to, taking the  
23 person to the facility that may have an effect on the person's  
24 physical or mental health.
- 25 **Examples—par (b)**
- 26 1 the person was subject to threat of violence from another person
- 27 2 a package of white powder fell out of the person's pocket

1                    3    the person was in an agitated state and hit their head against the side of  
2                                    the transport vehicle

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

6                    (6)    The director-general must—

7                                    (a)    enter the statement in the person’s record; and

8                                    (b)    keep a register of any restraint, involuntary seclusion or  
9    forcible giving of medication included in the statement; and

10                                    (c)    tell the public advocate, in writing, of any restraint, involuntary  
11    seclusion or forcible giving of medication included in the  
12    statement.

13                    (7)    In this section:

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

16                    **Example**

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

19                    **144B    Taking person to appear before court**

20                                    (1)    This section applies if a person taken to be in the custody of the  
21    director-general is required to appear before a court.

22                                    (2)    The corrections director-general or the CYP director-general must  
23    tell the director-general about the requirement as soon as practicable  
24    after becoming aware of it.

25                                    (3)    When the person is transferred from a secure mental health facility  
26    for the purpose of attending court, the person is taken to be in the  
27    custody of—

28    (a)    if the person is a detainee—the corrections director-general;  
29    and

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

4 **144C Release etc on change of status of person**

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

- 1 (c) make any other decision that the director-general may make in  
2 relation to the person under this Act; or
- 3 (d) release the person from the secure mental health facility.
- 4 *Note* For principles that must be taken into account when exercising a  
5 function under this Act, see s 6.
- 6 (3) The director-general must give written notice of a decision made  
7 under subsection (2) to the following:
- 8 (a) the ACAT;
- 9 (b) the public advocate;
- 10 (c) the person;
- 11 (d) if the person has a nominated person—the nominated person;
- 12 (e) if the person is a child—each person with parental  
13 responsibility for the child under the *Children and Young  
14 People Act 2008*, division 1.3.2 (Parental responsibility);
- 15 (f) if the person has a guardian under the *Guardianship and  
16 Management of Property Act 1991*—the guardian and the  
17 ACAT;
- 18 (g) if the person has an attorney under the *Powers of Attorney  
19 Act 2006*—the attorney.

20 **144D Power to apprehend if person escapes from secure**  
21 **mental health facility**

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



- 1 (b) the public advocate;
- 2 (c) if the person has a nominated person—the nominated person;
- 3 (d) if the person is a child—each person with parental  
4 responsibility for the child under the *Children and Young  
5 People Act 2008*, division 1.3.2 (Parental responsibility);
- 6 (e) if the person is a young detainee—the CYP director-general;
- 7 (f) if the person is a detainee—the corrections director-general;
- 8 (g) if there is a registered affected person in relation to the  
9 person—the director-general responsible for the *ACT Civil and  
10 Administrative Tribunal Act 2008*.
- 11 (4) A police officer, authorised ambulance paramedic, mental health  
12 officer or doctor may apprehend the person and return the person to  
13 the secure mental health facility.
- 14 *Note* See s 263 (Powers of entry and apprehension) and s 264 (Powers of  
15 search and seizure).
- 16 (5) A police officer, authorised ambulance paramedic, mental health  
17 officer or doctor who apprehends and returns the person to a secure  
18 mental health facility must give the director-general a written  
19 statement containing any of the following relevant information:
- 20 (a) the nature and extent of the force or assistance used to enter  
21 any premises, or to apprehend the person and take the person to  
22 the facility;
- 23 (b) the nature and extent of any restraint, involuntary seclusion or  
24 forcible giving of medication used when apprehending the  
25 person or taking the person to the facility;

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

4 **Examples—par (c)**

- 5 1 the person was subject to threat of violence from another person  
6 2 a package of white powder fell out of the person's pocket  
7 3 the person was in an agitated state and hit their head against the side of  
8 the transport vehicle

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

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

19 **144E Transfers to health facilities**

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

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

6 **Example—par (b)**

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

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

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

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

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

20 **144F Escort officers**

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

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

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

- 1 (b) the person is also taken to be in the custody of the  
2 director-general; and
- 3 (c) this section is additional to, and does not limit, any other  
4 provision relating to the escorting of a person under a territory  
5 law or a law of the Commonwealth, a State or another territory.
- 6 (3) In this section:
- 7 ***escort officer***, in relation to a person, means—
- 8 (a) an authorised health practitioner under the *Mental Health*  
9 *(Secure Facilities) Act 2016*; or
- 10 (b) an authorised person under the *Mental Health (Secure*  
11 *Facilities) Act 2016*; or
- 12 (c) a police officer; or
- 13 (d) a corrections officer if the corrections director-general has  
14 agreed to the officer having the function of escorting the  
15 person under this chapter; or
- 16 (e) a youth detention officer if the CYP director-general has  
17 agreed to the officer having the function of escorting the  
18 person under this chapter.
- 19 ***youth detention officer***—see the *Children and Young People*  
20 *Act 2008*, section 96.

21 **144G Crimes Act escape provisions**

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

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

3 *substitute*

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

7 **88 Application to be considered by committee**  
8 **Section 170 (2) (c) (ii)**

9 *substitute*

10 (ii) if the committee recommends approval for the surgery—

- 11 (A) the conditions (if any) to which the approval should  
12 be subject; and  
13 (B) a statement that the committee is satisfied that the  
14 neurosurgeon has the necessary qualifications and  
15 experience to perform the surgery;

16 **89 Consent of Supreme Court**  
17 **Section 173 (1) and (2), except note**

18 *substitute*

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

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

3 *insert*

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

5 **91 When ACAT must be constituted by more members**  
6 **Section 186 (1) (b)**

7 *omit*

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

10 *substitute*

11 section 79 (Review of mental health order)

12 **92 Section 186 (1) (f)**

13 *omit*

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

16 *substitute*

17 section 126 (Review of forensic mental health order)

18 **93 Notice of hearing**  
19 **Section 188 (3) (b)**

20 *omit*

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

23 *substitute*

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

1 **94 Section 188 (3) (d)**

2 *omit*

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

5 *substitute*

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

7 **95 Membership of mental health advisory council**  
8 **Section 240 (2) (c)**

9 *after*

10 or expertise in

11 *insert*

12 primary

13 **96 Powers of entry and apprehension**  
14 **New section 263 (1) (ia)**

15 *insert*

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

18 **97 Powers of search and seizure**  
19 **New section 264 (1) (na)**

20 *insert*

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

- 1 **98 Dictionary, new definition of *health director-general***
- 2 *insert*
- 3 *health director-general*, for part 8.4 (Leave for correctional
- 4 patients)—see section 142A.
- 5 **99 Dictionary, definition of *psychiatrist*, paragraph (b)**
- 6 *substitute*
- 7 (b) meets the requirements prescribed by regulation.
- 8 **100 Dictionary, new definition of *relevant director-general***
- 9 *insert*
- 10 *relevant director-general*, for part 8.4 (Leave for correctional
- 11 patients)—see section 142A.
- 12 **101 Dictionary, new definition of *secure mental health facility***
- 13 *insert*
- 14 *secure mental health facility*—see the *Mental Health (Secure*
- 15 *Facilities) Act 2016*, section 7.



1 **Schedule 1 Consequential amendments**

2 **Part 1.1 Children and Young People Act**  
3 **2008**

4 **[1.1] Section 109 (3)**

5 *substitute*

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

11 **[1.2] New section 109A**

12 *in division 5.1.3, insert*

13 **109A Transfer to mental health facility—notice of change in**  
14 **status**

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

22 **Examples**

- 23 1 the person's sentence of imprisonment ends  
24 2 the person is released on parole

1 3 the person is otherwise released from detention

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

5 (3) In this section:

6 *approved community care facility*—see the [Mental Health Act](#)  
7 [2015](#), dictionary.

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

10 **[1.3] Section 245 (3) and note**

11 *substitute*

12 (3) However—

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

18 *Note* See s 111 (6).

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

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

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

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

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

7 (4) In this section:

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

10 **Example**

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

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

16 **[1.4] Dictionary, new definition of *secure mental health facility***

17 *insert*

18 *secure mental health facility*—see the *Mental Health (Secure*  
19 *Facilities) Act 2016*, section 7.

20 **Part 1.2 Corrections Management Act**  
21 **2007**

22 **[1.5] Section 54 (3)**

23 *substitute*

24 (3) The director-general may direct an escort officer to escort the  
25 detainee—

26 (a) to or from the health facility; or

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

3 **[1.6] Section 54A heading**

4 *substitute*

5 **54A Transfer to mental health facility—notice of change in**  
6 **status**

7 **[1.7] New section 217 (3) and (4)**

8 *insert*

- 9 (3) However, a detainee transferred to a secure mental health facility  
10 under a direction under section 54 (Transfers to health facilities) is  
11 taken to be in the director-general's custody only—

12 (a) until the detainee is admitted to the facility; and

13 (b) if the detainee is transferred from a secure mental health  
14 facility under the *Mental Health Act 2015*, section 144B  
15 (Taking person to appear before court)—from when the  
16 detainee is transferred until when the detainee is returned; and

17 (c) if the detainee is returned to a correctional centre—when the  
18 detainee is discharged from the facility.

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

1 (4) In this section:

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

4 **Example**

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

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

10 **[1.8] Dictionary, new definition of *secure mental health facility***

11 *insert*

12 *secure mental health facility*—see the *Mental Health (Secure*  
13 *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 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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