

2020

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Mental Health)

Mental Health Amendment Bill 2020

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(Minister for Mental Health)

Mental Health Amendment Bill 2020

A Bill for

An Act to amend the *Mental Health Act 2015*

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 2020*.

3 **2 Commencement**

4 (1) This Act (other than sections 7 and 8) commences on the day after its
5 notification day.

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

8 (2) Sections 7 and 8 commence on a day fixed by the Minister by written
9 notice.

10 *Note* A single day or time may be fixed, or different days or times may be
11 fixed, for the commencement of different provisions (see [Legislation Act](#),
12 s 77 (1)).

13 (3) If sections 7 and 8 have not commenced before 12 February 2021,
14 they automatically commence on that day.

15 **3 Legislation amended**

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

17 **4 What ACAT must take into account—mental health order**
18 **New section 56 (1) (ea)**

19 *insert*

20 (ea) if the proceeding is on a mental health order for which there is a
21 registered affected person for an offence committed or alleged
22 to have been committed by the person—any statement by the
23 registered affected person;

1 **5 New section 56 (1) (ja)**

2 *insert*

- 3 (ja) if the proceeding is on a mental health order for which there is a
4 registered affected person for the offence committed or alleged
5 to have been committed by the person—the views of the victims
6 of crime commissioner;

7 **6 Contravention of mental health order**
8 **New section 77 (2A)**

9 *insert*

10 (2A) For subsection (2), a person complies with an order, if—

11 (a) the person consents to receiving treatment at a place other than
12 an approved mental health facility or approved community care
13 facility (a *facility*); and

14 (b) the relevant official is satisfied that—

15 (i) the person can be appropriately treated at a place other
16 than a facility; and

17 (ii) the other place is a suitable place for the treatment.

18 **Example—other place**

19 the person's home

20 **7 Apprehension**
21 **New section 80 (1) (c)**

22 *before the note, insert*

23 (c) the person—

24 (i) requires an immediate examination by a doctor; and

25 (ii) does not agree to be examined immediately.

1 **8 New section 80 (1A)**

2 *insert*

- 3 (1A) In forming a belief about a person for subsection (1), a police officer
4 or authorised ambulance paramedic is not required to make a medical
5 assessment or clinical judgement about the person.

6 **9 Section 80 (3)**

7 *substitute*

- 8 (3) The ACAT must, on application, review the following decisions
9 within 2 working days after the day the application is made:
10 (a) a decision of a police officer or authorised ambulance paramedic
11 under subsection (1);
12 (b) a decision of a doctor or mental health officer under
13 subsection (2) (b) (ii).

14 **10 Definitions—pt 7.2**
15 **Section 127, definition of *forensic patient***

16 *substitute*

17 *forensic patient* means a person—

- 18 (a) in relation to whom a forensic mental health order may be made
19 or is in force; or
20 (b) who, if required by an order of a court under the [Crimes Act](#),
21 part 13 or the [Crimes Act 1914](#) (Cwlth), part 1B must submit to
22 the jurisdiction of the ACAT or is subject to a review by the
23 ACAT.

1 **11 Disclosures to registered affected people**
2 **Section 134 (1)**

3 *substitute*

4 (1) This section applies if—

- 5 (a) a forensic mental health order has been made in relation to a
6 forensic patient; or
- 7 (b) under an order of a court under the [Crimes Act](#), part 13 or the
8 [Crimes Act 1914](#) (Cwlth), part 1B, a forensic patient must
9 submit to the jurisdiction of the ACAT or is subject to a review
10 by the ACAT.

11 **12 New section 134 (2) (ba) and (bb)**

12 *insert*

- 13 (ba) the patient must submit to the jurisdiction of the ACAT or is
14 subject to a review by the ACAT;
- 15 (bb) a decision made by the ACAT in relation to the patient in the
16 circumstances mentioned in paragraph (ba);

17 **13 Review of detention under court order**
18 **New section 180 (3) (ca)**

19 *insert*

- 20 (ca) if there is a registered affected person in relation to the person—
21 (i) any statement by the registered affected person; and
22 (ii) the views of the victims of crime commissioner;

1 **14 Review of conditions of release**
2 **New section 182 (3A)**

3 *insert*

4 (3A) In reviewing a condition of an order of release for a person, if there is
5 a registered affected person in relation to the person, the ACAT must
6 take into account—

- 7 (a) any statement by the registered affected person; and
8 (b) the views of the victims of crime commissioner.

9 **15 Notice of hearing**
10 **Section 188 (1) (a) (viii)**

11 *substitute*

12 (viii) if the hearing is on a proceeding on a mental health order,
13 a forensic mental health order, or a review required under
14 section 180 (2) (Review of detention under court order),
15 for which there is a registered affected person for the
16 person—

- 17 (A) the registered affected person; and
18 (B) the victims of crime commissioner;

19 **16 Appearance**
20 **Section 190 (1) (h)**

21 *substitute*

22 (h) if the proceeding is on a mental health order, a forensic mental
23 health order, or a review required under section 180 (2) (Review
24 of detention under court order), for which there is a registered
25 affected person for the offence committed or alleged to have
26 been committed by the subject person—the victims of crime
27 commissioner;

1 **17 Functions**
2 **New section 197 (ba)**

3 *insert*

4 (ba) to make guidelines for mental health facilities, mental health
5 professionals or anyone else exercising a function under this
6 Act, in relation to matters under this Act;

7 **18 New section 198A**

8 *insert*

9 **198A Chief psychiatrist may make guidelines**

10 (1) The chief psychiatrist may make guidelines for a mental health
11 facility, mental health professional or anyone else exercising a
12 function under this Act, in relation to any matter under this Act.

13 *Note 1* A reference to an Act includes a reference to the statutory instruments
14 made or in force under the Act, including any regulation (see [Legislation](#)
15 [Act](#), s 104).

16 *Note 2* The function of making guidelines under this section must not be
17 delegated (see s 200 (2) (b)).

18 (2) A guideline must include a statement about how the guideline
19 is consistent with—

- 20 (a) the objects and principles of this Act; and
21 (b) human rights.

22 (3) If a guideline relates to a function under this Act exercised by a police
23 officer or an authorised ambulance paramedic, the chief psychiatrist
24 must consult the chief police officer or the chief officer (ambulance
25 service) before making the guideline.

26 (4) A mental health facility conducted by, or operating under an
27 agreement with, the Territory must comply with a guideline that
28 applies to the facility.

- 1 (5) A person employed or engaged at a mental health facility mentioned
2 in subsection (4) must comply with a guideline that applies to the
3 facility.
- 4 (6) A person, other than a person mentioned in subsection (5), exercising
5 a function under this Act in relation to a matter for which a guideline
6 has been made must consider the guideline in the exercise of the
7 function.
- 8 (7) A guideline may apply, adopt or incorporate a law of another
9 jurisdiction or an instrument, as in force from time to time.
- 10 *Note* A reference to an instrument includes a reference to a provision of an
11 instrument (see [Legislation Act](#), s 14 (2)).
- 12 (8) The [Legislation Act](#), section 47 (6) does not apply in relation to a law
13 or an instrument mentioned in subsection (7).
- 14 *Note* A law or an instrument applied, adopted or incorporated under s (7) does
15 not need to be notified under the [Legislation Act](#) because s 47 (6) does
16 not apply (see [Legislation Act](#), s 47 (7)).
- 17 (9) A guideline is a notifiable instrument.
- 18 *Note* A notifiable instrument must be notified under the [Legislation Act](#).
- 19 (10) In this section:
20 *law of another jurisdiction*—see the [Legislation Act](#), section 47 (10).

21 **19 Delegation by chief psychiatrist**
22 **Section 200 (2), except note**

23 *substitute*

- 24 (2) However, the following functions must not be delegated:
- 25 (a) granting leave under section 122 (Leave in emergency or special
26 circumstances);
- 27 (b) making guidelines under section 198A (Chief psychiatrist may
28 make guidelines).

1 **20 Licence—decision on application**
2 **Section 226 (2)**

3 *substitute*

- 4 (2) A licence must include a condition—
- 5 (a) about the maximum number of people for whom treatment, care
6 or support may be provided at the licensed premises; and
- 7 (b) that a licensee must comply with a guideline under section 198A
8 that applies to the licensed premises.

9 **21 New section 271A**

10 *insert*

11 **271A Reviews by Minister and director-general**

- 12 (1) The Minister must invite public submissions and review the operation
13 of the following provisions of this Act not earlier than 5 years and not
14 later than 6 years after the day this section commences:
- 15 (a) section 58 (Psychiatric treatment order);
- 16 (b) section 66 (Community care order);
- 17 (c) section 101 (Forensic psychiatric treatment order);
- 18 (d) section 102 (Content of forensic psychiatric treatment order);
- 19 (e) section 108 (Forensic community care order).
- 20 (2) The Minister must present a report of the review under subsection (1)
21 to the Legislative Assembly not later than 2 years after the day the
22 review commences.

- 1 (3) The director-general must invite public submissions and review the
2 operation of the following provisions of this Act not earlier than
3 5 years and not later than 6 years after the day this section
4 commences:
- 5 (a) section 56 (What ACAT must take into account—mental health
6 order);
- 7 (b) section 77 (Contravention of mental health order);
- 8 (c) section 80 (Apprehension);
- 9 (d) section 127 (Definitions—pt 7.2), definition of *forensic patient*;
- 10 (e) section 134 (Disclosures to registered affected people);
- 11 (f) section 180 (Review of detention under court order);
- 12 (g) section 182 (Review of conditions of release);
- 13 (h) section 188 (Notice of hearing);
- 14 (i) section 190 (Appearance);
- 15 (j) section 198A (Chief psychiatrist may make guidelines).
- 16 (4) The director-general must give a report of the review under
17 subsection (3) to the Minister not later than 2 years after the day the
18 review commences.
- 19 (5) Subsections (1) to (4) and this subsection expire 9 years after the day
20 this section commences.

22 **Dictionary, note 2**

22 *insert*

- 23 • chief officer (ambulance service)
- 24 • chief police officer

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 30 July 2020.

2 Notification

Notified under the [Legislation Act](#) on 2020.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.
