

2023

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Mental Health)

Mental Health Amendment Bill 2023

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FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Mental Health)

Mental Health Amendment Bill 2023

A Bill for

An Act to amend the *Mental Health Act 2015*

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

1 Name of Act

This Act is the *Mental Health Amendment Act 2023*.

2 Commencement

This Act commences on the day after its notification day.

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

3 Legislation amended

This Act amends the [Mental Health Act 2015](#).

**4 Contravention of mental health order
Section 77 (2)**

substitute

(2) The relevant official for the order or a mental health officer may take action to tell the person that failure to comply with the order may result in the person being apprehended and taken to an approved mental health facility or approved community care facility for treatment, care or support.

(2A) Action under subsection (2) must—

- (a) be taken within 7 days of the contravention; and
- (b) involve the taking of all reasonable steps to tell the person the information mentioned in subsection (2).

(2B) If the noncompliance continues after the taking of action under subsection (2), the relevant official or mental health officer may require the person to be detained at an approved mental health facility or approved community care facility to ensure compliance with the order.

Note The chief psychiatrist may make a determination requiring a person to be taken to a place for treatment, care or support (see s 62 (Role of chief psychiatrist—psychiatric treatment order)).

1	5	Section 77 (3)
2		<i>omit</i>
3		For subsection (2), a person complies with an order, if—
4		<i>substitute</i>
5		A person is taken to have complied with an order after the relevant
6		official or mental health officer has taken action under subsection (2)
7		if—
8	6	Section 77 (3) (b)
9		<i>after</i>
10		official
11		<i>insert</i>
12		or mental health officer
13	7	Section 77 (4)
14		<i>omit</i>
15		subsection (2) (c)
16		<i>substitute</i>
17		subsection (2B)
18	8	Section 77 (5)
19		<i>omit</i>
20		requires the detention of a person under subsection (2) (c), the
21		relevant official
22		<i>substitute</i>
23		or mental health officer requires the detention of a person under
24		subsection (2B), the relevant official or the mental health officer

9 Apprehension
Section 80 (1)

omit

and take the person to an approved mental health facility

10 New section 80 (2A)

insert

(2A) A person apprehended under subsection (1) may be taken to an approved mental health facility by—

(a) the police officer or authorised ambulance paramedic who apprehended the person; or

(b) at the request of the police officer or authorised ambulance paramedic who apprehended the person—another police officer or authorised ambulance paramedic.

11 Section 80 (3)

omit

and take the person to an approved mental health facility

12 New section 80 (3A)

insert

(3A) A person apprehended under subsection (3) may be taken to an approved mental health facility by—

(a) the doctor or mental health officer who apprehended the person; or

(b) at the request of the doctor or mental health officer who apprehended the person—

(i) another doctor or mental health officer; or

- 1 (ii) a police officer; or
- 2 (iii) an authorised ambulance paramedic.

13 **Contravention of forensic mental health order** **Section 124 (2)**

- 5 *substitute*
- 6 (2) The relevant official for the order or a mental health officer may take
- 7 action to tell the person that failure to comply with the order may
- 8 result in the person being apprehended and taken to a relevant facility
- 9 for treatment, care or support.
- 10 (2A) Action taken under subsection (2) must—
- 11 (a) be taken within 7 days of the contravention; and
- 12 (b) involve the taking of all reasonable steps to tell the person the
- 13 information mentioned in subsection (2).
- 14 (2B) If the noncompliance continues after the taking of action under
- 15 subsection (2), the relevant official or mental health officer may
- 16 require the person to be detained at a relevant facility for treatment,
- 17 care or support.

14 **Section 124 (3)**

- 19 *omit*
- 20 subsection (2) (c)
- 21 *substitute*
- 22 subsection (2B)

- 1 **15 Section 124 (4)**
- 2 *after*
- 3 official
- 4 *insert*
- 5 or mental health officer
- 6 **16 Contravention of forensic mental health order—**
- 7 **absconding from facility**
- 8 **Section 125 (5)**
- 9 *after*
- 10 official
- 11 *insert*
- 12 for the order
- 13 **17 Review of detention under court order**
- 14 **New section 180 (3) (f)**
- 15 *insert*
- 16 (f) any information the chief psychiatrist or director-general has
- 17 given to the ACAT about the treatment, care or support the
- 18 person requires, including that the person be admitted to a
- 19 particular approved mental health facility or approved
- 20 community care facility.
- 21 **18 Sections 180 (4) and 182 (5)**
- 22 *omit*
- 23 stated mental health order or forensic mental health order
- 24 *substitute*
- 25 particular mental health order or forensic mental health order as in
- 26 force from time to time

**19 Mental health officers
Section 201 (1)**

omit

Minister

substitute

chief psychiatrist

20 Section 201, notes 1 to 3

substitute

Note For laws about appointments, see the [Legislation Act](#), pt 19.3.

21 New chapter 20

insert

**Chapter 20 Transitional—Mental Health
Amendment Act 2023**

300 Meaning of *commencement day*—ch 20

In this chapter—

commencement day means the day the *Mental Health Amendment Act 2023*, section 3 commences.

**301 Contravention of mental health order before
commencement day**

(1) This section applies if—

- (a) a person contravened a mental health order in force immediately before the commencement day in relation to the person; and
- (b) section 78 (Contravention of mental health order—absconding from facility) does not apply to the contravention; and

- 1 (c) the relevant official for the order did not take action under
2 section 77 (2) as in force immediately before the
3 commencement day in relation to the contravention.
- 4 (2) Section 77 applies in relation to the contravention.
- 5 **302 Contravention of forensic mental health order before**
6 **commencement day**
- 7 (1) This section applies if—
- 8 (a) a person contravened a forensic mental health order in force
9 immediately before the commencement day in relation to the
10 person; and
- 11 (b) section 125 (Contravention of forensic mental health order—
12 absconding from facility) does not apply to the contravention;
13 and
- 14 (c) the relevant official for the order did not take action under
15 section 124 (2) as in force immediately before the
16 commencement day in relation to the contravention.
- 17 (2) Section 124 applies in relation to the contravention.
- 18 **303 ACAT order not made before commencement day**
- 19 (1) This section applies if—
- 20 (a) the ACAT was required to review a person's detention and
21 consider the person's release under section 180 (2) as in force
22 immediately before the commencement day; and
- 23 (b) the ACAT did not make an order in relation to the person.
- 24 (2) Section 180 applies in relation to the ACAT's review of the person's
25 detention and consideration of the person's release.

1 **304 Expiry—ch 20**

2 This chapter expires 2 years after the commencement day.

3 *Note* A transitional provision is repealed on its expiry but continues to have
 4 effect after its repeal (see [Legislation Act](#), s 88).

5 **22 Dictionary, new definition of *restraint***

6 *insert*

7 *restraint* does not include the use of a spit hood.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 21 September 2023.

2 Notification

Notified under the [Legislation Act](#) on 2023.

3 Republications of amended laws

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

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