



Australian Capital Territory

Mental Health Amendment Act 2020

A2020-43

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Australian Capital Territory

Mental Health Amendment Act 2020

A2020-43

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 2020*.

2 Commencement

- (1) This Act (other than sections 7 and 8) 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)).

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

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

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

3 Legislation amended

This Act amends the *Mental Health Act 2015*.

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

insert

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

5 New section 56 (1) (ja)

insert

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

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

insert

- (2A) For subsection (2), a person complies with an order, if—
 - (a) the person consents to receiving treatment at a place other than an approved mental health facility or approved community care facility (a *facility*); and
 - (b) the relevant official is satisfied that—
 - (i) the person can be appropriately treated at a place other than a facility; and
 - (ii) the other place is a suitable place for the treatment.

Example—other place

the person's home

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

before the note, insert

- (c) the person—
 - (i) requires an immediate examination by a doctor; and
 - (ii) does not agree to be examined immediately.

8 New section 80 (1A)

insert

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

9 Section 80 (3)

substitute

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

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

substitute

forensic patient means a person—

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

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

substitute

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

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

insert

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

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

insert

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

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

insert

- (3A) In reviewing a condition of an order of release for a person, if there is a registered affected person in relation to the person, the ACAT must take into account—
- (a) any statement by the registered affected person; and
 - (b) the views of the victims of crime commissioner.

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

substitute

- (viii) if the hearing is on a proceeding on a mental health order, a forensic mental health order, or a review required under section 180 (2) (Review of detention under court order), for which there is a registered affected person for the person—
- (A) the registered affected person; and
 - (B) the victims of crime commissioner;

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

substitute

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

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

insert

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

18 New section 198A

insert

198A Chief psychiatrist may make guidelines

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

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

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

- (2) A guideline must include a statement about how the guideline is consistent with—
- (a) the objects and principles of this Act; and
 - (b) human rights.
- (3) If a guideline relates to a function under this Act exercised by a police officer or an authorised ambulance paramedic, the chief psychiatrist must consult the chief police officer or the chief officer (ambulance service) before making the guideline.
- (4) A mental health facility conducted by, or operating under an agreement with, the Territory must comply with a guideline that applies to the facility.

- (5) A person employed or engaged at a mental health facility mentioned in subsection (4) must comply with a guideline that applies to the facility.
- (6) A person, other than a person mentioned in subsection (5), exercising a function under this Act in relation to a matter for which a guideline has been made must consider the guideline in the exercise of the function.
- (7) A guideline may apply, adopt or incorporate a law of another jurisdiction or an instrument, as in force from time to time.

Note A reference to an instrument includes a reference to a provision of an instrument (see [Legislation Act](#), s 14 (2)).

- (8) The [Legislation Act](#), section 47 (6) does not apply in relation to a law or an instrument mentioned in subsection (7).

Note A law or an instrument applied, adopted or incorporated under s (7) does not need to be notified under the [Legislation Act](#) because s 47 (6) does not apply (see [Legislation Act](#), s 47 (7)).

- (9) A guideline is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

- (10) In this section:

law of another jurisdiction—see the [Legislation Act](#), section 47 (10).

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

substitute

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

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

substitute

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

21 New section 271A

insert

271A Reviews by Minister and director-general

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

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

22 Dictionary, note 2

insert

- chief officer (ambulance service)
- 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 27 August 2020.

3 Republications of amended laws

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

I certify that the above is a true copy of the Mental Health Amendment Bill 2020, which was passed by the Legislative Assembly on 20 August 2020.

Clerk of the Legislative Assembly

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