

2016

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Minister for Health)

# Mental Health (Secure Facilities) Bill 2016

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J2015-10

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2016

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Minister for Health)

# **Mental Health (Secure Facilities) Bill 2016**

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## **A Bill for**

An Act for the operation and management of secure mental health facilities

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Mental Health (Secure Facilities) Act 2016*.

4 **2 Commencement**

5 This Act commences on the day after its notification day.

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

8 **3 Dictionary**

9 The dictionary at the end of this Act is part of this Act.

10 *Note 1* The dictionary at the end of this Act defines certain terms used in this  
11 Act, and includes references (*signpost definitions*) to other terms  
12 defined elsewhere.

13 For example, the signpost definition ‘*child*—see the [Children and](#)  
14 [Young People Act 2008](#), section 11.’ means that the term ‘child’ is  
15 defined in that section and the definition applies to this Act.

16 *Note 2* A definition in the dictionary (including a signpost definition) applies to  
17 the entire Act unless the definition, or another provision of the Act,  
18 provides otherwise or the contrary intention otherwise appears (see  
19 [Legislation Act](#), s 155 and s 156 (1)).

20 **4 Notes**

21 A note included in this Act is explanatory and is not part of this Act.

22 *Note* See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of  
23 notes.



1     **5           Offences against Act—application of Criminal Code etc**

2           Other legislation applies in relation to offences against this Act.

3           *Note 1   Criminal Code*

4           The [Criminal Code](#), ch 2 applies to all offences against this Act (see

5           Code, pt 2.1).

6           The chapter sets out the general principles of criminal responsibility

7           (including burdens of proof and general defences), and defines terms

8           used for offences to which the Code applies (eg *conduct*, *intention*,

9           *recklessness* and *strict liability*).

10          *Note 2   Penalty units*

11          The [Legislation Act](#), s 133 deals with the meaning of offence penalties

12          that are expressed in penalty units.

13     **6           Application of Act**

14           This Act applies to an approved mental health facility declared by

15           the Minister under section 7 to be a secure mental health facility.

16     **7           What is a *secure mental health facility*?**

17           (1) The Minister may declare an approved mental health facility to be a

18           secure facility (a *secure mental health facility*).

19           *Note*    The power to make a declaration includes the power to amend or repeal

20           the declaration. The power to amend or repeal the declaration is

21           exercisable in the same way, and subject to the same conditions, as the

22           power to make the declaration (see [Legislation Act](#), s 46).

23           (2) The Minister may declare an approved mental health facility to be a

24           secure mental health facility only if the approved mental health

25           facility—

26           (a) is conducted by the Territory; and

27           (b) provides for, or will provide for, the involuntary detention and

28           treatment of people, including correctional patients and

29           forensic patients.

1 (3) A declaration is a notifiable instrument.

2 *Note 1* A notifiable instrument must be notified under the [Legislation Act](#).

3 *Note 2* **Approved mental health facility**—see the [Mental Health Act 2015](#),  
4 dictionary.

5 **8 Terms used in Mental Health Act 2015**

6 A term used in the [Mental Health Act 2015](#) has the same meaning in  
7 this Act.

8 *Note* A definition applies except so far as the contrary intention appears (see  
9 [Legislation Act](#), s 155).

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## 1 Part 2 Administration

### 2 9 Directions—secure mental health facilities

- 3 (1) The director-general may make directions in relation to a secure  
4 mental health facility (a *SMHF direction*) to facilitate the effective  
5 and efficient management of the facility.

6 *Note 1* The power to make an instrument includes the power to amend or repeal  
7 the instrument. The power to amend or repeal the instrument is  
8 exercisable in the same way, and subject to the same conditions, as the  
9 power to make the instrument (see [Legislation Act](#), s 46).

10 *Note 2* Power to make a statutory instrument includes power to make different  
11 provision in relation to different matters or different classes of matters,  
12 and to make an instrument that applies differently by reference to stated  
13 exceptions or factors (see [Legislation Act](#), s 48).

- 14 (2) A SMHF direction must be consistent with—

15 (a) this Act and the *Mental Health Act 2015*; and

16 (b) if the direction applies to a health practitioner—the registration  
17 standards for the health practitioner.

- 18 (3) A worker at a secure mental health facility must comply with a  
19 SMHF direction.

20 *Note* **Worker**—see the dictionary.

- 21 (4) A SMHF direction is a notifiable instrument.

22 *Note* A notifiable instrument must be notified, and presented to the  
23 Legislative Assembly, under the [Legislation Act](#).

- 24 (5) In this section:

25 **registration standard**, for a health practitioner, means the  
26 registration standard developed by the National Board established  
27 for the health profession under the Health Practitioner Regulation  
28 National Law.

1 **10 Prohibited things**

2 The director-general may declare, in a SMHF direction, that a thing  
3 is a prohibited thing for a secure mental health facility.

4 **Examples—prohibited thing**

- 5 • a mobile phone  
6 • a laptop or other electronic communication device  
7 • a knife

8 *Note 1* Power to make a statutory instrument includes power to make different  
9 provision in relation to different matters or different classes of matters  
10 (see [Legislation Act](#), s 48).

11 *Note 2* A SMHF direction is a notifiable instrument (see s 9 (4)).

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

15 **11 Directions to workers**

16 (1) The person in charge of a secure mental health facility may direct a  
17 worker at the facility to give the assistance that the person in charge  
18 believes on reasonable grounds is necessary and reasonable for the  
19 security and good order of the secure mental health facility.

20 (2) The worker must comply with the direction.

21 (3) If the person in charge of a secure mental health facility directs a  
22 worker who is an authorised person to assist an authorised health  
23 practitioner in a clinical area of the facility, the person in charge  
24 must—

25 (a) make a written record of the direction; and

26 (b) make the record available for inspection by the  
27 director-general.

1    **12           Director-general—delegations**

2           The director-general may delegate the director-general’s functions  
3           under this Act to an authorised health practitioner.

4           **Example**

5           The director-general delegates to an authorised health practitioner the  
6           director-general’s function in relation to searching a patient in the secure mental  
7           health facility.

8           *Note 1*   For the making of delegations and the exercise of delegated functions,  
9           see the [Legislation Act](#), pt 19.4.

10          *Note 2*   **Authorised health practitioner**—see the dictionary.

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

14    **13           Treatment of child or young person patient**

- 15           (1) This section applies if a patient is a child or young person.
- 16           (2) In making a decision under this Act in relation to the patient, a  
17           decision-maker must—
- 18               (a) regard the best interests of the patient as the paramount  
19               consideration; and
- 20               (b) have regard to the principles mentioned in the CYP Act,  
21               section 9 (Principles applying to Act) where relevant, except  
22               when it is, or would be, contrary to the best interests of the  
23               patient; and
- 24               (c) if the patient is an Aboriginal or Torres Strait Islander  
25               person—take into account the matters mentioned in the CYP  
26               Act, section 10 (Aboriginal and Torres Strait Islander children  
27               and young people principle); and
- 28               (d) consider each of the youth justice principles mentioned in the  
29               CYP Act, section 94 (Youth justice principles) that is relevant.

- 1 (3) A decision-maker must, if practicable and appropriate, have  
2 qualifications, experience or skills suitable to apply the principles  
3 mentioned in subsection (2) in making decisions under the Act in  
4 relation to patients who are children or young people.
- 5 (4) In this section:
- 6 *Aboriginal or Torres Strait Islander person*—see the CYP Act,  
7 dictionary.
- 8 *CYP Act* means the *Children and Young People Act 2008*.

1 **Part 3** **Contact**

2 **Division 3.1** **Contact generally**

3 **14** **Meaning of *contact***

4 In this Act:

5 ***contact***, between a patient and another person, includes—

6 (a) any form of oral communication, whether face-to-face or by  
7 telephone or other electronic communication; and

8 **Examples—other electronic communication**

- 9 • Skype  
10 • Facetime

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

14 (b) any form of written communication, including by electronic  
15 communication.

16 **Examples—written electronic communication**

- 17 • SMS  
18 • email

19 **15** **Contact—general considerations**

20 In exercising a function under this part, the director-general must  
21 ensure the following are balanced appropriately:

22 (a) the benefits of patients maintaining contact with family, friends  
23 and others;

24 (b) the need to protect the privacy of patients;

25 (c) the need to protect the safety of patients, mental health officers,  
26 authorised health practitioners, authorised people and other  
27 people who work at or visit a secure mental health facility;

- 1 (d) the need for security and good order at a secure mental health  
2 facility;
- 3 (e) the need to prevent prohibited things entering a secure mental  
4 health facility;
- 5 (f) anything else the director-general considers on reasonable  
6 grounds to be relevant.

7 **16 Contact with family and others—generally**

8 (1) The director-general must ensure, as far as practicable, that adequate  
9 opportunities are provided for patients to be able to contact family  
10 members, friends and others.

11 (2) In particular, the director-general must ensure that adequate  
12 facilities are available for a patient to contact an accredited person.

13 *Note* **Accredited person**—see the dictionary.

14 (3) The director-general may make a SMHF direction about the  
15 provision of, and access to, communications facilities at a secure  
16 mental health facility.

17 **Examples—communications facilities**

- 18 • telephones  
19 • internet access

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

23 (4) Subsection (1) is subject to the following sections:

24 (a) section 17 (Limits on contact with others);

25 (b) section 20 (Request by others for no contact with patient);

26 (c) section 21 (Patient contact with others—court-ordered  
27 restrictions).



1 **17 Limits on contact with others**

2 (1) The director-general may, in consultation with the chief psychiatrist,  
3 limit a patient's contact with others if the director-general believes  
4 on reasonable grounds that the limit is necessary and reasonable to  
5 avoid prejudicing the effectiveness of the patient's treatment, care or  
6 support.

7 (2) The director-general must not impose a limit on contact by the  
8 patient with someone authorised under a territory law to  
9 communicate with the patient.

10 **Examples**

- 11 • an official visitor  
12 • the public trustee and guardian

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 (3) As soon as practicable after imposing a limit on contact by a patient  
17 with others, the director-general must explain to the patient, in a  
18 way the patient is most likely to understand—

- 19 (a) the nature of the limit; and  
20 (b) the period for which the limit will be in effect; and  
21 (c) the reason for imposing the limit.

22 (4) A limit must not be imposed for longer than 7 days.

23 (5) Subsection (3) does not prevent a further limit being imposed  
24 immediately after the limit previously imposed ceases to be in  
25 effect.

1 **18 Limits on contact with others—register**

2 (1) If the director-general makes a decision under section 17 (1), the  
3 director-general must record the decision, and the reason for the  
4 decision, in a register kept by the director-general for that purpose.

5 *Note* A decision under s 17 (1) in relation to a patient, and the reason for it,  
6 must also be recorded in the patient's health record (see s 22).

7 (2) The register must include the following information:

- 8 (a) the name of the patient in relation to whom contact is limited;
- 9 (b) the details of the decision, including the date it was made, the  
10 length it is imposed for and the reasons for the decision;
- 11 (c) anything else the director-general considers necessary;
- 12 (d) anything else prescribed by regulation.

13 (3) The register may be kept in any form, including electronically, that  
14 the director-general decides.

15 (4) The director-general may correct a mistake, error or omission in the  
16 register.

17 (5) The register must be available for inspection, on request, by a  
18 commissioner exercising functions under the *Human Rights*  
19 *Commission Act 2005*.

20 *Note* The following commissioners exercise functions under the *Human*  
21 *Rights Commission Act 2005*:

- 22 • the children and young people commissioner
- 23 • the disability and community services commissioner
- 24 • the discrimination commissioner
- 25 • the health services commissioner
- 26 • the public advocate
- 27 • the victims of crime commissioner
- 28 • the human rights commissioner.

1     **19           Patient may request no contact with stated person**

2           (1) This section applies if a patient tells the person in charge of a secure  
3           mental health facility the patient does not want to be contacted by a  
4           stated person.

5           (2) The person in charge of the facility must take reasonable steps to  
6           prevent the stated person contacting the patient.

7           **Examples—reasonable steps**

8           1     not allowing the stated person to visit the patient

9           2     not delivering mail from the stated person to the patient

10          3     not giving the patient telephone messages from the stated person

11          *Note 1*   The name and contact details of the person the patient does not want  
12                  contact with must be recorded in the patient's health record (see s 20).

13          *Note 2*   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          (3) However, if the stated person is a health practitioner involved in the  
17                  patient's care or treatment, the person in charge of the facility must  
18                  not prevent the stated person contacting the patient unless satisfied  
19                  on reasonable grounds there are good reasons why the stated person  
20                  should not contact the patient.

21          (4) The patient may, at any time, tell the person in charge of the facility  
22                  if the patient wants to again be contacted by the stated person.

23          (5) The director-general may make a SMHF direction about steps to be  
24                  taken for subsection (2).

25          *Note*     A SMHF direction is a notifiable instrument (see s 9 (4)).

26     **20           Request by others for no contact with patient**

27           (1) This section applies if a person (the *complainant*) tells the person in  
28           charge of a secure mental health facility that the complainant does  
29           not want to be contacted by a stated patient in the facility.

- 1 (2) If the person in charge of the facility is satisfied there are good  
2 reasons why the patient should not contact the complainant, the  
3 person in charge of the facility must—
- 4 (a) tell the patient about the complainant’s request; and  
5 (b) take reasonable steps to prevent the patient contacting the  
6 complainant.
- 7 **Example—good reason**  
8 inappropriate or threatening behaviour towards the complainant
- 9 *Note* An example is part of the Act, is not exhaustive and may extend, but  
10 does not limit, the meaning of the provision in which it appears (see  
11 [Legislation Act](#), s 126 and s 132).
- 12 (3) The person in charge of the facility must keep all mail from the  
13 patient addressed to the complainant until—
- 14 (a) the complainant tells the person in charge that the patient may  
15 contact the complainant; or  
16 (b) the patient is discharged from the facility.
- 17 *Note* The name and contact details of the complainant must be recorded in  
18 the patient’s health record (see s 22).
- 19 (4) If the patient is discharged from the facility, the person in charge of  
20 the facility must give the mail to—
- 21 (a) if the patient is discharged to a correctional centre—the  
22 corrections director-general; or  
23 (b) in any other case—the patient.
- 24 *Note 1* **Correctional centre**—see the [Corrections Management Act 2007](#),  
25 dictionary.
- 26 *Note 2* **Corrections director-general**—see the [Mental Health Act 2015](#),  
27 dictionary.

1     **21           Patient contact with others—court-ordered restrictions**

2           (1) This section applies if a court orders that a patient is not to contact  
3           another person (the *non-contactable person*).

4           (2) The director-general must take reasonable steps to prevent the  
5           patient contacting the non-contactable person.

6           *Note*     The name and contact details of the non-contactable person must be  
7                     recorded in the patient’s health record (see s 22).

8           (3) The person in charge of the secure mental health facility must keep  
9           all mail from the stated patient addressed to the non-contactable  
10          person until—

11           (a) the order ends or the court orders otherwise; or

12           (b) the patient is discharged from the facility.

13          (4) However, if the patient is a correctional patient returning to a  
14          correctional centre, the person in charge of the facility must give all  
15          mail from the patient addressed to the non-contactable person to the  
16          corrections director-general.

17          *Note*     *Correctional patient*—see the *Mental Health Act 2015*, s 135.

18                     *Corrections director-general*—see the *Mental Health Act 2015*,  
19                     dictionary.

20     **22           Patient contact with others—record**

21           The person in charge of a secure mental health facility must record  
22           the following information in a patient’s health record:

23           (a) if a decision is made under section 17 (1) (Limits on contact  
24           with others) to limit a patient’s contact with others—the  
25           decision, the reason for the decision and the period for which  
26           contact is limited;

27           (b) if section 19 (Patient may request no contact with stated  
28           person) applies to the patient—the names and contact details of  
29           the people the patient does not want to be contacted by;

- 1 (c) if section 20 (Request by others for no contact with patient) or  
2 section 21 (Patient contact with others—court-ordered  
3 restrictions) applies to the patient—the names and contact  
4 details of the people the patient must not contact.

5 **Division 3.2 Contact—monitoring electronic**  
6 **communications**

7 **23 Monitoring electronic communications**

- 8 (1) The director-general must ensure that—  
9 (a) a secure mental health facility has an area (an *electronic*  
10 *communications area*) where electronic communication  
11 facilities are available for use by patients in the facility; and  
12 (b) patients are supervised at all times while in the electronic  
13 communications area; and  
14 (c) patients do not use an electronic communication device or  
15 other means to capture visual data of the patient or another  
16 person.  
17 (2) The director-general may monitor communications in the electronic  
18 communications area, other than between a patient and an  
19 accredited person, if the director-general believes on reasonable  
20 grounds that the monitoring is necessary and reasonable to avoid  
21 prejudicing the effectiveness of the patient's treatment, care or  
22 support.  
23 (3) The director-general must tell the parties to the communication—  
24 (a) that it might be monitored; and  
25 (b) if it is monitored—that it has been monitored.

- 1 (4) In this section:
- 2 *capture visual data*—a person *captures visual data* of another
- 3 person if the person captures moving or still images of the other
- 4 person by a camera or any other means in such a way that—
- 5 (c) a recording is made of the images; or
- 6 (d) the images are capable of being transmitted in real time with or
- 7 without retention or storage in a physical or electronic form; or
- 8 (e) the images are otherwise capable of being distributed.

9 **24 Electronic communications—directions**

10 The director-general may make a SMHF direction about access to

11 and supervision of electronic communication facilities in a secure

12 mental health facility.

13 *Note* A SMHF direction is a notifiable instrument (see s 9 (4)).

14 **Division 3.3 Contact—monitoring mail**

15 **25 Monitoring mail**

- 16 (1) This section applies if the director-general suspects on reasonable
- 17 grounds that the contents of the mail of a patient—
- 18 (a) includes a prohibited thing; or
- 19 (b) may affect the security or good order of, or the safety of a
- 20 patient or other person at, the facility.
- 21 (2) However, this section does not apply to mail a patient sends to or
- 22 receives from an accredited person.

23 *Note* **Accredited person**—see the dictionary.

- 24 (3) The director-general may search the patient's mail.

- 1 (4) The director-general must—  
2 (a) before searching a patient’s mail—tell the patient about the  
3 director-general’s suspicion and that the patient’s mail will be  
4 searched; and  
5 (b) allow the patient, or a person named by the patient, to be  
6 present when the mail is searched.
- 7 (5) The director-general must record in the patient’s health record the  
8 details of a search conducted under this section including—  
9 (a) the date of the search; and  
10 (b) the reasons for the search; and  
11 (c) the outcome of the search.
- 12 (6) In this section:  
13 *mail*, of a patient, means—  
14 (a) mail addressed to the patient; or  
15 (b) mail from the patient addressed to another person.  
16 *search*, a patient’s mail—  
17 (a) includes search the mail—  
18 (i) with a device using electronic or other technology; and  
19 (ii) by physical means; but  
20 (b) does not include reading any correspondence included in the  
21 mail.

22 **26 Mail searches—consequences**

- 23 (1) The director-general must deliver a patient’s mail searched under  
24 section 25 (Monitoring mail) to the addressee as soon as practicable.  
25 (2) Subsection (1) is subject to section 53 (Seizing property—general).



1 (3) If a search of the patient's mail reveals information about the  
2 commission of a serious offence, the director-general must give the  
3 information to the chief police officer.

4 (4) In this section:

5 *serious offence* means an offence punishable by imprisonment for  
6 5 years or longer, and includes an offence in another jurisdiction  
7 that would be a serious offence if committed in the ACT.

8 **27 Searched mail—register**

9 (1) The director-general must keep a register of mail searched under  
10 section 25 (Monitoring mail).

11 (2) The register must include the following information in relation to  
12 each item of mail searched:

13 (a) the name of the patient whose mail was searched;

14 (b) the date the mail was searched;

15 (c) whether the mail contained a prohibited thing;

16 (d) whether the search revealed information about the commission  
17 of a serious offence and, if so, whether the information was  
18 given to the chief police officer;

19 (e) the date the mail was given to the addressee;

20 (f) anything else prescribed by regulation.

21 (3) The register may be kept in any form, including electronically, that  
22 the director-general decides.

23 (4) The director-general may correct a mistake, error or omission in the  
24 register.

1 (5) The register must be available for inspection, on request, by a  
2 commissioner exercising functions under the *Human Rights*  
3 *Commission Act 2005*.

4 *Note* The following commissioners exercise functions under the *Human*  
5 *Rights Commission Act 2005*:

- 6 • the children and young people commissioner
- 7 • the disability and community services commissioner
- 8 • the discrimination commissioner
- 9 • the health services commissioner
- 10 • the public advocate
- 11 • the victims of crime commissioner
- 12 • the human rights commissioner.

13 (6) In this section:  
14 *serious offence*—see section 26 (4).

## 15 **Division 3.4 Contact—visitors**

### 16 **28 Visiting conditions—direction—general**

- 17 (1) The director-general may make a SMHF direction about conditions  
18 for visiting a secure mental health facility.
- 19 (2) The direction may include conditions relating to the following:
- 20 (a) times and length of visits;
  - 21 (b) the number of visitors allowed for each patient at a time;
  - 22 (c) the provision of evidence of a visitor’s identity or status;
  - 23 (d) the provision of biometric information to verify a visitor’s  
24 identity;
  - 25 (e) procedures in relation to visitors who are accredited people;
  - 26 (f) procedures in relation to visitors who are children;
  - 27 (g) circumstances in which visitors may be monitored;

- 1 (h) facilities for visitors, including storage for personal property;  
2 (i) prohibited things;  
3 (j) anything else the director-general considers necessary to  
4 protect security or good order at the secure mental health  
5 facility.

6 *Note* The [Information Privacy Act 2014](#) applies to personal information about  
7 visitors collected under this section.

## 8 **29 Visiting conditions—notice**

9 The director-general must take reasonable steps to bring any visiting  
10 conditions for a secure mental health facility to the attention of  
11 visitors at the facility.

### 12 **Examples**

- 13 1 making the direction available on the facility’s website  
14 2 displaying a copy of the conditions prominently at each entrance to the  
15 facility

16 *Note 1* A SMHF direction is a notifiable instrument (see s 9 (4)).

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

## 20 **30 Visiting conditions—compliance**

- 21 (1) A visitor to a secure mental health facility must comply with the  
22 visiting conditions for the facility.
- 23 (2) If a visitor fails to comply with a visiting condition, the person in  
24 charge of the facility may direct the visitor to leave the facility.
- 25 (3) The person in charge of the secure mental health facility must—
- 26 (a) keep a written record of all directions given under  
27 subsection (2); and
- 28 (b) each year, give the director-general a report about all directions  
29 given under subsection (2) during the year.

- 1 (4) If the person in charge of a secure mental health facility directs a  
2 visitor to leave the facility, the person must give the visitor a written  
3 statement that includes—  
4 (a) the reason for the direction; and  
5 (b) a copy of the visiting conditions for the facility.

6 **31 Visits by accredited people**

- 7 (1) The person in charge of a secure mental health facility may, for a  
8 reason relating to the safety of the accredited person or a patient in  
9 the facility, direct an accredited person to leave the facility.

10 **Examples—reasons relating to safety of accredited person or patient**

- 11 • a disturbance at the secure mental health facility  
12 • a fire at the secure mental health facility  
13 • clinical reasons related to the patient’s treatment

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

- 17 (2) The person in charge must, as soon as practicable, tell the  
18 director-general about the direction and the reason for it.

19 **32 Visits by public trustee and guardian etc**

- 20 (1) The following people may, at any reasonable time, enter a secure  
21 mental health facility following a request from a patient at the  
22 facility or on the person’s own initiative:  
23 (a) the public trustee and guardian;  
24 (b) a commissioner exercising functions under the [Human Rights  
25 Commission Act 2005](#);  
26 (c) an accredited person;

1 (d) a person prescribed by regulation.

2 *Note 1* The following commissioners exercise functions under the *Human*  
3 *Rights Commission Act 2005*:

- 4 • the children and young people commissioner
- 5 • the disability and community services commissioner
- 6 • the discrimination commissioner
- 7 • the health services commissioner
- 8 • the public advocate
- 9 • the victims of crime commissioner
- 10 • the human rights commissioner.

11 *Note 2* An official visitor may enter a visitable place at any reasonable time  
12 following a complaint from an entitled person or on the official visitor's  
13 own initiative (see *Official Visitor Act 2012*, s 15 (1)). A mental health  
14 facility is a visitable place for the purposes of the *Official Visitor*  
15 *Act 2012* (see *Mental Health Act 2015*, s 211).

16 (2) The director-general may decide that a nominated time is not a  
17 reasonable time if the director-general believes on reasonable  
18 grounds the person's safety would be at risk if the person visited the  
19 facility at the time nominated.

20 **Example—time that would not be reasonable**

21 an emergency in relation to a patient at the mental health facility

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

- 1 (3) The director-general must give the person any reasonable assistance  
2 the person asks for to exercise the person’s functions at the secure  
3 mental health facility.

4 **Examples**

- 5 1 giving access to documents and records relating to a complaint  
6 2 answering reasonable questions about the facts of a complaint  
7 3 giving reasonable access to facilities

8 *Note* The director-general must give an official visitor any reasonable  
9 assistance the official visitor asks for to exercise their functions at a  
10 secure mental health facility (see [Official Visitor Act 2012](#), s 18 (2)).

- 11 (4) The director-general must not give the person access to a patient’s  
12 health record without the patient’s consent.

13 **33 Visits by family, friends and others**

- 14 (1) This section applies if the director-general has made a decision  
15 under section 17 (2) (Limits on contact with others) to restrict  
16 contact with a patient.

- 17 (2) The director-general or the person in charge of the facility may  
18 require a person (an *intending visitor*) wanting to visit the patient to  
19 make an appointment to do so.

- 20 (3) The director-general or person in charge of the facility may refuse to  
21 allow the intending visitor to visit the patient if the director-general  
22 believes on reasonable grounds that the refusal is necessary and  
23 reasonable to avoid prejudicing the effectiveness of the patient’s  
24 treatment, care or support.

- 25 (4) If the person in charge of the facility refuses to allow an intending  
26 visitor to visit the patient, the person must, as soon as practicable,  
27 give the intending visitor and the director-general written notice of  
28 the decision and the reasons for it.

1   **34**           **Directions to visitors**

2           (1) The director-general may, orally or in writing, give a direction to a  
3           visitor at a secure mental health facility to do, or not do, something  
4           if the director-general believes on reasonable grounds that the  
5           direction is necessary and reasonable—

6                   (a) to ensure compliance with the visiting conditions; or

7                   (b) for the safety of other patients or staff at the facility.

8           (2) A direction under subsection (1) may include a direction to—

9                   (a) not enter the facility; or

10                  (b) leave the facility.

11           (3) If a direction is given in relation to a visitor who is a child, the  
12           director-general must tell the child's parent or someone else with  
13           parental responsibility for the child about the direction and the  
14           reasons for it.

15           *Note*     ***Person with parental responsibility***, for a child—see the dictionary.

16           (4) The director-general must keep a record of each direction given  
17           under this section.

18   **35**           **Taking prohibited things into secure mental health facility**

19           (1) A person must not, without the director-general's approval—

20                   (a) take a prohibited thing into a secure mental health facility; or

21                   (b) give or send a prohibited thing to a patient in a secure mental  
22                   health facility.

23           *Note*     If a form is approved under s 77 for this provision, the form must be  
24           used.

- 1 (2) The director-general may direct a person who contravenes  
2 subsection (1) to—
- 3 (a) if possession of the prohibited thing is not an offence—leave  
4 the prohibited thing in a secure place provided at the entrance  
5 to the secure mental health facility; or
- 6 (b) leave the secure mental health facility.
- 7 (3) In this section:
- 8 *send* a prohibited thing to a patient in a secure mental health facility  
9 includes throw, drop or propel the prohibited thing into the facility.

10 **36 Visitors—searches**

- 11 (1) The director-general may, at any time, direct an authorised person to  
12 conduct a scanning search, frisk search or ordinary search of a  
13 visitor entering, or in, a secure mental health facility if the  
14 director-general believes on reasonable grounds that it is prudent to  
15 conduct the search to protect—
- 16 (a) the safety of anyone at the secure mental health facility; or  
17 (b) security or good order at the secure mental health facility.
- 18 *Note Frisk search, ordinary search and scanning search—see s 39.*
- 19 (2) Also, an authorised person may conduct a scanning search, frisk  
20 search or ordinary search of a visitor in a secure mental health  
21 facility if the authorised person suspects on reasonable grounds that  
22 the visitor is carrying—
- 23 (a) a prohibited thing; or  
24 (b) anything else that creates, or is likely to create, a risk to—
- 25 (i) the personal safety of a patient or anyone else; or  
26 (ii) security or good order at the secure mental health facility.



- 1 (3) An authorised person must not search the visitor or the visitor's  
2 personal property without the visitor's consent.
- 3 (4) A visitor may refuse or withdraw consent and have the search  
4 discontinued at any time.
- 5 (5) If the visitor refuses to allow an authorised person to search the  
6 visitor or, if the search has started, withdraws consent, the  
7 authorised person may—
- 8 (a) if the visitor is entering (or about to enter) the secure mental  
9 health facility—refuse to allow the visitor to enter the facility;  
10 or
- 11 (b) if the visitor is in the facility—direct the visitor to leave the  
12 facility.
- 13 (6) This section does not apply to—
- 14 (a) personal property that a visitor leaves in a secure place  
15 provided at the entrance to a secure mental health facility; or
- 16 (b) anything for which a visitor has the director-general's approval  
17 to take into a secure mental health facility.

18 **Example par (a)—secure place**

19 a lockable cupboard

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

- 23 (7) In this section:  
24 **visitor** includes a person working at the secure mental health  
25 facility.

26 **Examples—worker at approved mental health facility**

- 27 • staff member  
28 • tradesperson  
29 • health practitioner

1     **37           Searches of visitors—requirements**

- 2           (1) An authorised person may conduct a scanning search, frisk search or  
3           ordinary search of a visitor under section 36 only if—
- 4               (a) the authorised person is of the same sex as the visitor; or
- 5               (b) if that is not practicable—another person of the same sex as, or  
6               a sex nominated by, the visitor is present while the search is  
7               conducted.
- 8           (2) The authorised person must conduct the least invasive kind of  
9           search practicable.
- 10          (3) The authorised person must conduct the search—
- 11               (a) in a way that provides reasonable privacy for the person; and  
12               (b) as quickly as practicable.

13     **38           Searches of visitors—child visitors**

- 14          (1) If a visitor is a child, an authorised person—
- 15               (a) may only conduct a scanning search of the child; and  
16               (b) must not conduct any other search of the child.
- 17          (2) If an authorised person suspects on reasonable grounds that a visitor  
18          who is a child is carrying something mentioned in section 36 (2), the  
19          authorised person must—
- 20               (a) direct the child—
- 21                       (i) not to enter the secure mental health facility; or  
22                       (ii) if the child is in the facility—to leave the facility; and
- 23               (b) tell the person with parental responsibility for the child about  
24               the direction and the reasons for it; and

25                       *Note    Person with parental responsibility*, for a child—see the  
26                       dictionary.

- 1           (c) tell the director-general, in writing, about the direction and the  
2           reasons for it.

1 **Part 4 Searches of patients**  
2 **Division 4.1 Searches of patients—preliminary**

3 **39 Definitions**

4 In this Act:

5 *frisk search* means—

- 6 (a) a search of a person conducted by quickly running the hands  
7 over the person’s outer garments; and  
8 (b) an examination of anything worn or carried by the person that  
9 is conveniently and voluntarily removed by the person.

10 *ordinary search* means a search of a person, or of articles in a  
11 person’s possession, that may include—

- 12 (a) requiring the person to remove the person’s overcoat, coat or  
13 jacket and any gloves, shoes or hat; and  
14 (b) an examination of those items.

15 *scanning search* means a search of a person by electronic or other  
16 means that does not require the person to remove the person’s  
17 clothing or to be touched by someone else.

18 **Examples—scanning searches**

- 19 1 passing a portable electronic or other device over a person  
20 2 requiring a person to pass by or through an electronic or other device

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

1 **Division 4.2** **Scanning, frisk and ordinary searches**  
2 **of patients**

3 **40** **Scanning, frisk and ordinary searches of patients**

- 4 (1) The director-general may, at any time, direct an authorised health  
5 practitioner to conduct a scanning search, frisk search or ordinary  
6 search of a patient if the director-general believes on reasonable  
7 grounds that it is prudent to conduct the search to protect—  
8 (a) the safety of anyone at the secure mental health facility; or  
9 (b) security or good order at the secure mental health facility.

10 **Examples—when search may be conducted**

- 11 1 on a patient's admission to the secure mental health facility  
12 2 when a patient returns from leave to the secure mental health facility  
13 3 following a visit from a visitor to the secure mental health facility

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

- 17 (2) Also, an authorised health practitioner may conduct a scanning  
18 search, frisk search or ordinary search of a patient if the authorised  
19 health practitioner suspects on reasonable grounds that the patient is  
20 carrying—  
21 (a) a prohibited thing; or  
22 (b) anything else that creates, or is likely to create, a risk to—  
23 (i) the personal safety of the patient or anyone else; or  
24 (ii) security or good order at the secure mental health facility.

25 *Note* Section 52 provides for the use of force to carry out searches under this  
26 part.

- 1     **41           Scanning, frisk and ordinary searches—requirements**
- 2           (1) An authorised health practitioner may conduct a scanning search,  
3           frisk search or ordinary search of a person under section 40 only  
4           if—
- 5               (a) the authorised health practitioner is of the same sex as the  
6               person to be searched; or
- 7               (b) if that is not practicable—another person of the same sex as, or  
8               a sex nominated by, the person to be searched is present while  
9               the search is conducted.
- 10          (2) The authorised health practitioner must conduct the least invasive  
11          kind of search practicable.
- 12          (3) The authorised health practitioner must conduct the search—
- 13               (a) in a way that provides reasonable privacy for the person; and  
14               (b) as quickly as practicable.
- 15     **42           Scanning, frisk and ordinary searches—record**
- 16           If an authorised health practitioner conducts a search of a patient  
17           under this division, the authorised health practitioner must record  
18           the following in the patient’s health record:
- 19               (a) the date and time of the search;
- 20               (b) the reason for the search;
- 21               (c) the kind of search conducted;
- 22               (d) the outcome of the search.
- 23           *Note*     Information about a search of a patient under this division must also be  
24           included in the register of searches (see s 59).

1     **Division 4.3                    Strip searches**

2     **43            Meaning of *seizeable item*—div 4.3**

3            In this division:

4            *seizeable item* means anything that—

- 5            (a) is a prohibited thing; or
- 6            (b) may be used by a patient in a way that may involve—
- 7                    (i) intimidating anyone else; or
- 8                    (ii) an offence; or
- 9                    (iii) a risk to the personal safety of anyone else; or
- 10                   (iv) a risk to security or good order at the facility.

11     **44            Strip searches—when may be conducted**

- 12            (1) A patient may be strip searched only if the director-general gives a
- 13            direction in accordance with subsection (2).

14            *Note*     Section 52 provides for the use of force to carry out searches under this

15            part.

- 16            (2) The director-general may direct an authorised health practitioner to
- 17            strip search a patient if the director-general suspects on reasonable
- 18            grounds that—

- 19                    (a) the patient has a seizeable item concealed on the patient; and
- 20                    (b) a less intrusive search will not detect the item.

- 21            (3) To remove any doubt, a strip search of a patient may be conducted
- 22            immediately after any scanning search, frisk search or ordinary
- 23            search of the patient.

- 24            (4) The director-general must make a SMHF direction in relation to
- 25            strip searches under this section.

26            *Note*     A SMHF direction is a notifiable instrument (see s 9 (4)).

1 **45 Strip searches—presence of authorised health**  
2 **practitioners**

- 3 (1) A strip search of a patient must be done—  
4 (a) by an authorised health practitioner of the same sex as, or a sex  
5 nominated by, the patient; and  
6 (b) in the presence of 1 or more other authorised health  
7 practitioners, each of whom must be of the same sex as, or a  
8 sex nominated by, the patient.  
9 (2) However, the number of authorised health practitioners present  
10 during the search must be no more than necessary and reasonable to  
11 ensure the search is carried out as safely and effectively as possible.  
12 (3) The authorised health practitioner conducting the search may direct  
13 another authorised health practitioner present to provide assistance  
14 that the conducting health practitioner believes on reasonable  
15 grounds is necessary and reasonable for the search.  
16 (4) An authorised health practitioner may give directions to the patient  
17 for the conduct of the search in accordance with this section.

18 **Examples**

19 directions that the patient raise 1 or both arms, raise any long hair or turn in a  
20 particular direction

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

24 **46 Strip searches—general rules**

- 25 (1) A strip search must be conducted in a private area or an area that  
26 provides reasonable privacy for the patient being searched.  
27 (2) The search must not involve—  
28 (a) the removal from the patient of more clothes than is necessary  
29 and reasonable to conduct the search; or



- 1 (b) the removal from the patient of more clothes at any time than is  
2 necessary and reasonable to conduct the search; or
- 3 (c) without limiting paragraph (b), both the upper and lower parts  
4 of the patient's body being uncovered at the same time.
- 5 (3) Subject to section 52 (Searches—use of force), the search must not  
6 involve any touching of the patient's body by an authorised health  
7 practitioner.
- 8 (4) Each authorised health practitioner present during the search must  
9 ensure, as far as practicable, that—
- 10 (a) the search is done in a way that minimises embarrassment for  
11 the patient; and
- 12 (b) the search is done quickly; and
- 13 (c) the patient is allowed to dress in private immediately after the  
14 search is finished.
- 15 (5) If clothing from a patient is seized during a strip search, the  
16 director-general must ensure that the patient is left with, or given,  
17 appropriate clothing to wear.

18 **47 Strip search—record**

19 If an authorised health practitioner conducts a strip search of a  
20 patient under this division, the authorised health practitioner must,  
21 as soon as practicable, record the following in the patient's health  
22 record:

- 23 (a) the date and time of the search;
- 24 (b) the reason for the search;
- 25 (c) the outcome of the search, including whether a seizeable item  
26 was found on the patient and if so, what was found.

27 *Note* Information about a search of a patient under this division must also be  
28 included in the register of searches (see s 59).

- 1 **Division 4.4 Treatment—patient has ingested or**  
2 **concealed something**
- 3 **48 Treatment if patient has ingested or concealed thing—**  
4 **general**
- 5 (1) This section applies if the director-general suspects on reasonable  
6 grounds that a patient—
- 7 (a) has ingested or inserted something in the patient’s body that  
8 may jeopardise the patient’s health or wellbeing; or
- 9 (b) has a prohibited thing concealed in or on the patient’s body  
10 that may be used in a way that may pose a risk to the security  
11 or good order of the secure mental health facility.
- 12 (2) The director-general must arrange for a doctor to—
- 13 (a) examine the patient to determine whether the patient has  
14 ingested or inserted something in, or concealed a prohibited  
15 thing in or on, the patient’s body; and
- 16 (b) if necessary—
- 17 (i) administer the treatment the doctor considers appropriate  
18 or necessary to remove the thing; or
- 19 (ii) transfer the patient to another facility for treatment to  
20 remove the thing.
- 21 (3) In this section:  
22 **health facility**—see the *Health Act 1993*, section 6.

- 1     **49           Treatment if patient has ingested or concealed thing—**  
2     **record etc**
- 3           (1) This section applies if a patient receives treatment under section 48.
- 4           (2) The director-general must—
- 5               (a) record the following in the patient’s health record:
- 6                     (i) the date and time of the treatment;
- 7                     (ii) the reason for the treatment;
- 8                     (iii) the kind of treatment administered;
- 9                     (iv) the outcome of the treatment; and
- 10          (b) notify the public advocate.

11     **Division 4.5                    Searches of premises and personal**  
12     **property etc**

- 13     **50            Searches—premises and personal property etc**
- 14           (1) The director-general may, at any time, conduct a search of any part  
15           of a secure mental health facility if the director-general believes on  
16           reasonable grounds that it is prudent to conduct the search to  
17           protect—
- 18               (a) the safety of anyone at the secure mental health facility; or
- 19               (b) security or good order at the secure mental health facility.
- 20           (2) To remove any doubt, a search under subsection (1) may include a  
21           search of—
- 22               (a) the personal property or room of a patient in the secure mental  
23               health facility; or
- 24               (b) a vehicle used to transport a patient.

- 1 (3) If a patient's personal property or room is to be searched, the  
2 director-general must—
- 3 (a) tell the patient about the director-general's belief and that the  
4 patient's personal property or room at the facility will be  
5 searched; and
- 6 (b) allow the patient, or a person named by the patient, to be  
7 present when the personal property or room is searched.
- 8 (4) The director-general may search the patient's personal property or  
9 room at the secure mental health facility.
- 10 (5) In this section:
- 11 *search* includes search—
- 12 (a) with a device using electronic or other technology; and  
13 (b) by physical means.

14 **51 Searches of premises and personal property etc—record**

15 If the director-general conducts a search of a patient's personal  
16 property or room under section 50, the director-general must record  
17 the following in the patient's health record:

- 18 (a) the date and time of the search;  
19 (b) the reason for the search;  
20 (c) the outcome of the search, including whether anything was  
21 found and if so, what was found.

22 *Note* Information about a search of a patient's personal property or room  
23 under s 50 must also be included in the register of searches (see s 59).

24 **52 Searches—use of force**

- 25 (1) The director-general may use force—  
26 (a) to carry out a search under this part; or

1 (b) to prevent the loss, destruction or contamination of anything  
2 seized, or that may be seized, during the search.

3 (2) However, the director-general may use force only in accordance  
4 with division 4.8 (Use of force).

## 5 **Division 4.6 Seizing property**

### 6 **53 Seizing property—general**

7 (1) The director-general may seize—

8 (a) anything found at a secure mental health facility, whether or  
9 not in a person's possession, that the director-general suspects  
10 on reasonable grounds jeopardises or is likely to jeopardise—

11 (i) security or good order at the secure mental health facility;  
12 or

13 (ii) the safety of anyone at the secure mental health facility;  
14 or

15 (b) anything found at a secure mental health facility, whether or  
16 not in a person's possession, that the director-general suspects  
17 on reasonable grounds is being used, or is intended, for the  
18 commission of an offence; or

19 (c) a prohibited thing found on a patient or in a patient's custody  
20 or possession, unless the patient has the director-general's  
21 written approval to possess the thing; or

22 (d) a prohibited thing found in mail addressed to a patient that is  
23 not yet in the patient's possession.

24 (2) To remove any doubt, this section extends to anything found in a  
25 search under this part.

1 **54 Receipt for things seized**

2 (1) As soon as practicable after a thing is seized under this part, the  
3 director-general must give a receipt for it to—

4 (a) the owner of the thing; or

5 (b) if the owner cannot be identified after reasonable inquiries  
6 (given the thing's apparent value)—the person from whom the  
7 thing was seized.

8 (2) The receipt must include the following:

9 (a) a description of the thing seized;

10 (b) an explanation of why the thing was seized;

11 (c) a statement about the effect of section 55;

12 (d) anything else prescribed by regulation.

13 (3) In this section:

14 *owner*, of a thing, includes a person entitled to possession of the  
15 thing.

16 **55 Forfeiture of things seized**

17 (1) A thing seized under this part is forfeited to the Territory if the  
18 director-general decides on reasonable grounds—

19 (a) that—

20 (i) after making reasonable inquiries (given the thing's  
21 apparent value), the owner of the thing cannot be found;  
22 or

23 (ii) after making reasonable efforts (given the thing's  
24 apparent value), the thing cannot be returned to the  
25 owner; or

- 1 (b) that—
- 2 (i) possession of the thing by a patient is an offence; or
- 3 (ii) it is necessary to keep the thing to stop it being used for
- 4 the commission of an offence; or
- 5 (iii) the thing is inherently unsafe.
- 6 (2) The director-general may deal with a thing forfeited to the Territory
- 7 under this section, or dispose of it, as the director-general considers
- 8 on reasonable grounds to be appropriate.
- 9 (3) However, subsection (2) is subject to any order under the *Crimes*
- 10 *Act 1900*, section 249 (Seizure of forfeited articles).

11 **Examples—s (2)**

- 12 1 giving a forfeited weapon to a police officer
- 13 2 keeping a forfeited electrical appliance and using it for the benefit of patients
- 14 generally
- 15 3 dumping a forfeited thing of little value

16 *Note 1* The *Crimes Act 1900* also provides for articles forfeited under any law

17 in force in the ACT to be seized by a member of the police force, taken

18 before the Magistrates Court and for the court to order disposal of the

19 article by the public trustee (see that Act, s 249 and s 250).

20 *Note 2* The *Uncollected Goods Act 1996* provides generally for the disposal of

21 uncollected goods, including goods abandoned on premises controlled

22 by the Territory.

23 *Note 3* An example is part of the Act, is not exhaustive and may extend, but

24 does not limit, the meaning of the provision in which it appears (see

25 *Legislation Act*, s 126 and s 132).

26 **56 Return of things seized but not forfeited**

- 27 (1) If a thing seized under this Act is not forfeited, the director-general
- 28 must return it to its owner—
- 29 (a) not later than the end of 6 months after the day it was seized; or

1 (b) if a proceeding for an offence involving the thing is started  
2 within the 6-month period—at the end of the proceeding and  
3 any appeal from, or the review of, the proceeding.

4 (2) However, if the thing was being retained as evidence of an offence  
5 and the director-general believes on reasonable grounds that its  
6 retention as evidence is no longer necessary, the director-general  
7 must return it immediately.

8 (3) In this section:  
9 *owner*, of a thing—see section 54 (3).

#### 10 **57 Application for order disallowing seizure**

11 (1) A person claiming to be entitled to anything seized under this Act  
12 may apply to the Magistrates Court within 10 days after the day of  
13 the seizure for an order disallowing the seizure.

14 (2) The application may be heard only if the applicant has served a copy  
15 of the application on the director-general.

16 *Note* For how documents may be served, see the [Legislation Act](#), pt 19.5.

17 (3) The director-general is entitled to appear as respondent in the  
18 hearing of the application.

#### 19 **58 Order for return of seized thing**

20 (1) This section applies if a person claiming to be entitled to anything  
21 seized under this Act applies to the Magistrates Court under  
22 section 57 for an order disallowing the seizure.

23 (2) The Magistrates Court must make an order disallowing seizure if  
24 satisfied that—

25 (a) the applicant would, apart from the seizure, be entitled to the  
26 return of the seized thing; and

27 (b) the thing is not connected with an offence against this Act; and

28 (c) possession of the thing by the person would not be an offence.



- 1           (3) The Magistrates Court may also make an order disallowing the  
2 seizure if satisfied there are exceptional circumstances justifying the  
3 making of the order.
- 4           (4) If the Magistrates Court makes an order disallowing the seizure, the  
5 court may make 1 or more of the following ancillary orders:
- 6               (a) an order directing the director-general to return the thing to the  
7 applicant or to someone else who appears to be entitled to it;
- 8               (b) if the thing cannot be returned or has depreciated in value  
9 because of the seizure—an order directing the Territory to pay  
10 reasonable compensation;
- 11              (c) an order about the payment of costs in relation to the  
12 application.

## 13           **Division 4.7                    Searches—register**

### 14           **59           Searched premises and personal property—register**

- 15           (1) The director-general must keep a register of searches carried out at a  
16 secure mental health facility under this part.
- 17           (2) The register must include the following information in relation to  
18 each search:
- 19               (a) the name of the patient who was searched or whose personal  
20 property or room was searched;
- 21               (b) the name of each person present during the search;
- 22               (c) the date the patient or the patient’s personal property or room  
23 was searched;
- 24               (d) the reason for the search;
- 25               (e) the kind of search undertaken;
- 26               (f) the outcome of the search;

- 1 (g) whether a prohibited thing or thing that may affect the security  
2 or good order of, or the safety of a patient or other person at,  
3 the facility was found during the search;
- 4 (h) whether anything was seized during the search and, if so,  
5 details of the thing seized;
- 6 (i) whether the search revealed information about the commission  
7 of an offence and, if so, whether the information was given to  
8 the chief police officer;
- 9 (j) if the patient received treatment under section 48 (Treatment if  
10 patient has ingested or concealed thing—general)—
- 11 (i) the treatment the patient received; and  
12 (ii) where the patient received the treatment; and  
13 (iii) who administered the treatment; and  
14 (iv) the outcome of the treatment;
- 15 (k) anything else the director-general considers relevant;  
16 (l) anything else prescribed by regulation.
- 17 (3) The register may be kept in any form, including electronically, that  
18 the director-general decides.
- 19 (4) The director-general may correct a mistake, error or omission in the  
20 register.

1 (5) The register must be available for inspection, on request, by a  
2 commissioner exercising functions under the *Human Rights*  
3 *Commission Act 2005*.

4 *Note* The following commissioners exercise functions under the *Human*  
5 *Rights Commission Act 2005*:

- 6 • the children and young people commissioner
- 7 • the disability and community services commissioner
- 8 • the discrimination commissioner
- 9 • the health services commissioner
- 10 • the public advocate
- 11 • the victims of crime commissioner
- 12 • the human rights commissioner.

13 (6) In this section:

14 *search carried out under this part* includes treatment given to a  
15 patient under section 48 (Treatment if patient has ingested or  
16 concealed thing—general).

## 17 **Division 4.8 Use of force**

### 18 **60 Managing use of force**

19 (1) The director-general must ensure, as far as practicable, that the use  
20 of force in relation to the management of patients in a secure mental  
21 health facility is always—

- 22 (a) a last resort; and
- 23 (b) in accordance with this division.

24 (2) Without limiting section 9 (Directions—secure mental health  
25 facilities), the director-general must make a SMHF direction in  
26 relation to the use of force, including provision in relation to the  
27 following:

- 28 (a) the circumstances, and by whom, force may be used;

1                    (b) the kinds of force that may be used.

2                    *Note 1*    A SMHF direction is a notifiable instrument (see s 9 (4)).

3                    *Note 2*    The power to make a SMHF direction includes power to make different  
4                    provisions in relation to different matters or different classes of matters,  
5                    and provisions that apply differently by reference to stated exceptions or  
6                    factors (see [Legislation Act](#), s 48).

7                    **61                    Authorised use of force**

8                    (1) An authorised health practitioner may use force that is necessary  
9                    and reasonable for this Act to act under section 52 (Searches—use  
10                    of force).

11                    (2) However, an authorised health practitioner may use force only if the  
12                    authorised health practitioner believes on reasonable grounds that  
13                    the purpose for which force may be used cannot be achieved in  
14                    another way.

15                    **62                    Application of force**

16                    (1) An authorised health practitioner may use force under this division  
17                    only if the authorised health practitioner—

18                    (a) gives a clear warning of the intended use of force; and

19                    (b) allows enough time for the warning to be observed; and

20                    (c) uses no more force than is necessary and reasonable in the  
21                    circumstances; and

22                    (d) uses force, as far as practicable, in a way that reduces the risk  
23                    of causing death or grievous bodily harm.

- 1 (2) However, the authorised health practitioner need not comply with  
2 subsection (1) (a) or (b) if, in urgent circumstances, the authorised  
3 health practitioner believes on reasonable grounds that doing so  
4 would create a risk of injury to the authorised health practitioner, the  
5 patient or anyone else.

6 **Example—urgent circumstances**

7 the patient is assaulting someone or engaging in self-harm

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

11 **63 Medical examination after use of force**

12 The director-general must ensure that a doctor examines a patient  
13 injured by the use of force under this division as soon as practicable  
14 and that appropriate health care is available to the patient.

15 **64 Use of force—record**

16 (1) The director-general must keep a record of any incident involving  
17 the use of force under this division.

18 (2) The record must—

19 (a) include details of the incident, including the circumstances, the  
20 decision to use force and the force used; and

21 (b) be available for inspection, on request, by a commissioner  
22 exercising functions under the [Human Rights Commission](#)  
23 [Act 2005](#).

24 *Note* The following commissioners exercise functions under the  
25 [Human Rights Commission Act 2005](#):

- 26 • the children and young people commissioner  
27 • the disability and community services commissioner  
28 • the discrimination commissioner  
29 • the health services commissioner  
30 • the public advocate

- 1    • the victims of crime commissioner  
 2    • the human rights commissioner.
- 3            (3) The director-general must give a copy of the record to the public  
 4            advocate and an official visitor.
- 5     **65            Use of force—register**
- 6            (1) The director-general must keep a register of any incident involving  
 7            the use of force under this division.
- 8            (2) The register must include the following information in relation to  
 9            each incident involving the use of force:
- 10                  (a) the name of the patient involved in the incident;  
 11                  (b) the name of each person present during the incident;  
 12                  (c) the date force was used on the patient;  
 13                  (d) the reason for the use of force;  
 14                  (e) the force used;  
 15                  (f) the injury caused, if any;  
 16                  (g) if someone died as a result of the use of force, the date and  
 17                  circumstances of the death;  
 18                  (h) anything else the director-general considers relevant;  
 19                  (i) anything else prescribed by regulation.
- 20            (3) The register may be kept in any form, including electronically, that  
 21            the director-general decides.
- 22            (4) The director-general may correct a mistake, error or omission in the  
 23            register.

1 (5) The register must be available for inspection, on request, by a  
2 commissioner exercising functions under the *Human Rights*  
3 *Commission Act 2005*.

4 *Note* The following commissioners exercise functions under the *Human*  
5 *Rights Commission Act 2005*:

- 6 • the children and young people commissioner  
7 • the disability and community services commissioner  
8 • the discrimination commissioner  
9 • the health services commissioner  
10 • the public advocate  
11 • the victims of crime commissioner  
12 • the human rights commissioner.

1 **Part 5** **Notification and review of**  
2 **decisions**

3 **66** **Meaning of *reviewable decision*—pt 5**

4 In this part:

5 *reviewable decision* means a decision mentioned in  
6 schedule 1, column 3 under a provision of this Act mentioned in  
7 column 2 in relation to the decision.

8 **67** **Reviewable decision notices**

9 If the director-general makes a reviewable decision, the  
10 director-general must give a reviewable decision notice to the  
11 following people:

12 (a) a commissioner exercising functions under the *Human Rights*  
13 *Commission Act 2005*;

14 *Note* The following commissioners exercise functions under the  
15 *Human Rights Commission Act 2005*:

- 16 • the children and young people commissioner  
17 • the disability and community services commissioner  
18 • the discrimination commissioner  
19 • the health services commissioner  
20 • the public advocate  
21 • the victims of crime commissioner  
22 • the human rights commissioner.



1 (b) each entity mentioned in schedule 1, column 4 in relation to the  
2 decision.

3 *Note 1* The director-general must also take reasonable steps to give a  
4 reviewable decision notice to any other person whose interests are  
5 affected by the decision (see *ACT Civil and Administrative Tribunal*  
6 *Act 2008*, s 67A).

7 *Note 2* The requirements for a reviewable decision notice are prescribed under  
8 the *ACT Civil and Administrative Tribunal Act 2008*.

## 9 **68 Applications for review**

10 The following may apply to the ACAT for review of a reviewable  
11 decision:

12 (a) a commissioner exercising functions under the *Human Rights*  
13 *Commission Act 2005*;

14 (b) an entity mentioned in schedule 1, column 4 in relation to the  
15 decision;

16 (c) any other person whose interests are affected by the decision.

17 *Note* If a form is approved under the *ACT Civil and Administrative Tribunal*  
18 *Act 2008* for the application, the form must be used.

## Part 6 Authorised people

### 69 Appointment of authorised people

- (1) The director-general may appoint a person as an authorised person for this Act.

*Note 1* For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

*Note 2* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

- (2) The director-general may appoint a person as an authorised person only if the director-general is satisfied the person—

- (a) holds a security licence; and
- (b) is, or will be, employed by a person holding a master licence under the [Security Industry Act 2003](#); and
- (c) is registered under the [Working with Vulnerable People \(Background Checking\) Act 2011](#); and
- (d) has the kinds of qualifications, training, skills or experience necessary for dealing with people with a mental illness or mental disorder; and
- (e) has not—
  - (i) committed an offence against this Act; or
  - (ii) been convicted or found guilty of an offence involving fraud, dishonesty, violence, drugs or weapons; and
- (f) is capable of competently exercising the functions of an authorised person for this Act.

*Note* A person engaged in an activity or service, the usual functions of which include providing treatment, care, rehabilitation or protection to people who are mentally impaired, mentally dysfunctional or mentally ill must be registered under the [Working with Vulnerable People \(Background Checking\) Act 2011](#) to engage in the activity (see that Act, s 12).

- 1 (3) The director-general may end the appointment of a person as an  
2 authorised person if—
- 3 (a) the person ceases to hold a security licence; or
- 4 (b) the person is not employed by a person holding a master  
5 licence under the *Security Industry Act 2003*; or
- 6 (c) the person's registration under the *Working with Vulnerable  
7 People (Background Checking) Act 2011* ends; or
- 8 (d) the person commits an offence against this Act; or
- 9 (e) the person has been convicted or found guilty of an offence  
10 involving fraud, dishonesty, violence, drugs or weapons; or
- 11 (f) the person is not capable of competently exercising the  
12 functions of an authorised person for this Act.

13 *Note* An authorised person's appointment also ends if the person resigns (see  
14 *Legislation Act*, s 210).

- 15 (4) In this section:

16 *security licence* means a licence under the *Security Industry  
17 Act 2003* that authorises the licensee to carry out a security activity  
18 under that Act, section 13.

## 19 **70 Authorised people—functions**

- 20 (1) An authorised person—
- 21 (a) has the functions given to the person under this Act; and
- 22 (b) is subject to the directions of the director-general in the  
23 exercise of the functions.
- 24 (2) The functions of an authorised person may be limited by—
- 25 (a) the instrument appointing the person; or
- 26 (b) written notice given to the person by the director-general; or
- 27 (c) a regulation.

**71            Damage etc to be minimised**

- 1            (1) In the exercise, or purported exercise, of a function under this Act,  
2            an authorised person must take all reasonable steps to ensure that the  
3            person causes as little inconvenience, detriment and damage as  
4            practicable.  
5
- 6            (2) If an authorised person damages anything in the exercise or  
7            purported exercise of a function under this Act, the authorised  
8            person must give written notice of the particulars of the damage to  
9            the person the authorised person believes on reasonable grounds is  
10           the owner of the thing.
- 11           (3) The notice must state that—
- 12           (a) the person may claim compensation from the Territory if the  
13           person suffers loss or expense because of the damage; and
- 14           (b) compensation may be claimed and ordered in a proceeding for  
15           compensation brought in a court of competent jurisdiction; and
- 16           (c) the court may order the payment of reasonable compensation  
17           for the loss or expense only if satisfied it is just to make the  
18           order in the circumstances of the particular case.

**72            Identity cards**

- 19           (1) The director-general must give an authorised person an identity card  
20           stating the person's name and that the person is an authorised  
21           person.  
22
- 23           (2) The identity card must show—
- 24           (a) a recent photograph of the authorised person; and  
25           (b) the card's date of issue and expiry; and  
26           (c) anything else prescribed by regulation.
- 27           (3) A person commits an offence if the person—
- 28           (a) stops being an authorised person; and

1 (b) does not return the person's identity card to the  
2 director-general as soon as practicable (but not later than  
3 7 days) after the day the person stops being an authorised  
4 person.

5 Maximum penalty: 1 penalty unit.

6 (4) Subsection (3) does not apply to a person if the person's identity  
7 card has been—

8 (a) lost or stolen; or

9 (b) destroyed by someone else.

10 *Note* The defendant has an evidential burden in relation to the matters  
11 mentioned in s (4) (see [Criminal Code](#), s 58).

12 (5) An offence against this section is a strict liability offence.

1                      **Part 7                                      Miscellaneous**

2                      **73                      Prohibited things—tradespeople**

- 3                      (1) This section applies to a tradesperson at a secure mental health  
4                      facility for the purpose of providing a trade service at the facility.
- 5                      (2) Despite section 35 (Taking prohibited things into secure mental  
6                      health facility), a tradesperson may, with approval of the  
7                      director-general, take a prohibited thing into a secure mental health  
8                      facility for the purpose of providing a trades service at the facility.
- 9                      (3) The director-general may make a SMHF direction in relation to the  
10                      provision of trade services at a secure mental health facility.

11                      *Note*                      A SMHF direction is a notifiable instrument (see s 9 (4)).

12                      **74                      Health care**

- 13                      (1) The director-general must ensure that—
- 14                      (a) patients have a standard of health care equivalent to that  
15                      available to other people in the ACT; and
- 16                      (b) arrangements are made to ensure the provision of appropriate  
17                      health services for patients.
- 18                      (2) In particular, the director-general must ensure that patients have  
19                      access to—
- 20                      (a) regular health checks; and
- 21                      (b) timely treatment where necessary, particularly in urgent  
22                      circumstances; and
- 23                      (c) hospital care where necessary; and
- 24                      (d) as far as practicable—
- 25                      (i) specialist health services from health practitioners; and

- 1 (ii) necessary health care programs, including rehabilitation  
2 programs.
- 3 (3) A regulation may make provision in relation to health services for  
4 patients, including provision about the following:
- 5 (a) appointments for patients with health practitioners;
- 6 (b) security arrangements for patients visiting health practitioners  
7 or other health facilities, particularly outside the secure mental  
8 health facility.

9 **75 Protection of officials from liability**

- 10 (1) An official is not civilly liable for conduct engaged in honestly and  
11 without recklessness—
- 12 (a) in the exercise of a function under this Act; or
- 13 (b) in the reasonable belief that the conduct was in the exercise of  
14 a function under this Act.
- 15 (2) Any civil liability that would, apart from this section, attach to the  
16 official attaches instead to the Territory.
- 17 (3) In this section:
- 18 **conduct** means an act or omission to do an act.
- 19 **official** means—
- 20 (a) the chief psychiatrist; or
- 21 (b) the person in charge of a secure mental health facility; or
- 22 (c) anyone else exercising a function under this Act.

23 *Note 1* An official visitor exercising a function under this Act is protected from  
24 civil liability by the [Official Visitor Act 2012](#), s 24.

25 *Note 2* A reference to an Act includes a reference to the statutory instruments  
26 made or in force under the Act, including any regulation (see  
27 [Legislation Act](#), s 104).

1 **76 Determination of fees**

2 (1) The Minister may determine fees for this Act.

3 *Note* The [Legislation Act](#) contains provisions about the making of  
4 determinations and regulations relating to fees (see pt 6.3).

5 (2) A determination is a disallowable instrument.

6 *Note* A disallowable instrument must be notified, and presented to the  
7 Legislative Assembly, under the [Legislation Act](#).

8 **77 Approved forms**

9 (1) The Minister may approve forms for this Act.

10 (2) If the Minister approves a form for a particular purpose, the  
11 approved form must be used for that purpose.

12 *Note* For other provisions about forms, see the [Legislation Act](#), s 255.

13 (3) An approved form is a notifiable instrument.

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

15 **78 Regulation-making power**

16 The Executive may make regulations for this Act.

17 *Note* Regulations must be notified, and presented to the Legislative  
18 Assembly, under the [Legislation Act](#).

19 **79 Review of Act**

20 (1) The Minister must review the operation of this Act as soon as  
21 practicable after the end of its 3rd year of operation.

22 (2) The Minister must present a report of the review to the Legislative  
23 Assembly within 3 months after the day the review is started.

24 (3) This section expires 5 years after the day it commences.



## Schedule 1      Reviewable decisions

(see pt 5)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	10	declare something to be a prohibited thing	patient
2	17 (2)	restrict a patient's contact with others	patient patient's guardian patient's nominated person
3	20 (2)	prevent a patient's contact with a complainant	patient patient's guardian patient's nominated person
4	24	direction about access to and supervision of electronic communication facilities at secure mental health facility	patient patient's guardian patient's nominated person
5	25 (3)	search a patient's mail	patient patient's guardian patient's nominated person
6	28 (1)	direction about visiting conditions for a secure mental health facility	patient patient's guardian patient's nominated person
7	30 (2)	direction to leave secure mental health facility after failing to comply with visiting condition	visitor directed to leave facility
8	33 (3)	refuse to allow intending visitor to visit patient in secure mental health facility	intending visitor
9	34 (2) (a)	direction to not enter secure mental health facility	visitor directed to not enter facility

**Schedule 1**

## Reviewable decisions

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<b>column 1 item</b>	<b>column 2 section</b>	<b>column 3 decision</b>	<b>column 4 entity</b>
10	34 (2) (b)	direction to leave secure mental health facility after failing to comply with director-general's direction	visitor directed to leave facility
11	36 (5) (a)	refuse to allow visitor to enter secure mental health facility after refusing to allow authorised person to search personal property	visitor refused entry to facility
12	36 (5) (b)	direction to leave secure mental health facility after refusing to allow authorised person to search personal property	visitor directed to leave facility
13	53 (1)	seizing property	patient patient's guardian patient's nominated person

# Dictionary

(see s 3)

*Note 1* The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

*Note 2* For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- ACAT
- chief police officer
- correctional centre
- director-general (see s 163)
- doctor
- health practitioner
- Minister (see s 162)
- notifiable instrument (see s 10)
- nurse
- nurse practitioner
- police officer
- public employee
- public trustee and guardian.

*Note 3* The [Mental Health Act 2015](#) contains definitions relevant to this Act. For example, the following terms are defined in the [Mental Health Act 2015](#), dictionary:

- approved mental health facility
- chief psychiatrist
- coordinating director-general
- correctional patient (see s 135)
- corrections director-general
- CYP director-general
- entitled person (see s 208)
- forensic mental health order
- forensic patient

- 1                   • mental health officer
- 2                   • nominated person
- 3                   • official visitor (see s 208)
- 4                   • transfer direction (see s 136)
- 5                   • visitable place (see s 208).

6                   *Note 4*   If a word or expression is defined in the *Mental Health Act 2015*, the  
7                   definition applies to the use of the word or expression in this Act (see  
8                   s 8).

9                   ***accredited person***, in relation to a patient, means each of the  
10                  following:

- 11                 (a) if the patient has a guardian under the *Guardianship and*  
12                 *Management of Property Act 1991*—the guardian;
- 13                 (b) if the patient has a nominated person—the nominated person;
- 14                 (c) if the patient is a child or young person—the CYP  
15                 director-general;
- 16                 (d) a lawyer acting in a professional capacity;
- 17                 (e) an official visitor;
- 18                 (f) the health services commissioner;
- 19                 (g) the human rights commissioner;
- 20                 (h) the public advocate;
- 21                 (i) a police officer acting in a professional capacity;
- 22                 (j) a member of the Commonwealth Parliament;
- 23                 (k) a member of the Legislative Assembly;
- 24                 (l) a person prescribed by regulation.

1 ***authorised health practitioner*** means a health practitioner providing  
2 care or treatment for patients who is authorised by the  
3 director-general for this Act.

4 **Examples—health practitioner**

- 5 • nurse
- 6 • nurse practitioner

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 ***authorised person*** means a person appointed under section 69.

11 ***child***—see the [Children and Young People Act 2008](#), section 11.

12 ***contact***, between a patient and another person—see section 14.

13 ***frisk search***—see section 39.

14 ***health record***—see the [Health Records \(Privacy and Access\)](#)  
15 [Act 1997](#), dictionary.

16 ***ordinary search***—see section 39.

17 ***patient*** means a patient in a secure mental health facility.

18 ***person with parental responsibility***, for a child, means a parent or  
19 someone else with parental responsibility for the child under the  
20 [Children and Young People Act 2008](#), division 1.3.2.

21 ***prohibited thing*** means a thing declared to be a prohibited thing  
22 under section 10.

23 ***reviewable decision***, for part 5 (Notification and review of  
24 decisions)—see section 66.

25 ***scanning search***—see section 39.

26 ***secure mental health facility***—see section 7.

27 ***seizeable item***, for division 4.3 (Strip searches)—see section 43.

28 ***SMHF direction***—see section 9.

- 1 **visiting conditions**, at a secure mental health facility, means  
2 conditions included in a SMHF direction made under section 28 in  
3 relation to the facility.
- 4 **visitor**, in relation to a secure mental health facility, includes a  
5 person wishing to enter the facility as a visitor.
- 6 **worker**, at a secure mental health facility, means a person working  
7 at the facility, whether as a public employee, contractor, volunteer  
8 or otherwise.
- 9 **young person**—see the *Children and Young People Act 2008*,  
10 section 12.

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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).