

Australian Capital Territory

# Mental Health (Contravention of Mental Health Order) Guidelines 2024 (No 1)

Notifiable instrument NI2024-289

made under the

**Mental Health Act 2015, s 198A (Chief psychiatrist may make guidelines)**

---

## **1 Name of instrument**

This instrument is the *Mental Health (Contravention of Mental Health Order) Guidelines 2024 (No 1)*

## **2 Commencement**

This instrument commences on the day after it is notified.

## **3 Direction**

I make the attached Contravention of Mental Health Orders Guideline.

Associate Professor Anthony Cidoni  
Chief Psychiatrist  
4 June 2024

# CHIEF PSYCHIATRIST GUIDELINE

## Contraventions

PURPOSE	To ensure consistency and compliance to manage the contravention of mental health orders, including the contravention of mental health orders, section 77 of the <i>Mental Health Act 2015</i> (MHA) and forensic mental health orders, section 124 of the MHA.
COMPLIANCE STATEMENT	<p>If a person contravenes the requirements of their mental health order, the delegate of the Chief Psychiatrist/Care Coordinator or a Mental Health Officer may take reasonable steps to tell the person that failure to comply with the order may result in the person being apprehended and taken to an approved mental health facility or approved community care facility for treatment, care or support.</p> <p>This action must be taken within 7 days of the contravention having been identified.</p> <p>Following identification of the non-compliance, the consumer must be given an opportunity to comply. However, if non-compliance continues, the person can be taken to an approved mental health facility or approved community care facility to ensure compliance with the order.</p>
SCOPE	This guideline applies to the contravention of a person subject to a mental health order except contravention of a mental health order via absconding (section 78) of the Act.
DEFINITIONS	<p><b>Chief Psychiatrist</b> is a psychiatrist and public servant appointed by the Minister for Mental Health. Functions of the Chief Psychiatrist’s include the making of guidelines in relation to the provision of treatment, care or support, rehabilitation and protection for persons who have a mental illness.</p> <p><b>Care Coordinator</b> is a public servant appointed by the Minister for Mental Health. The Care Coordinator’s functions include coordinating the provision of treatment, care or support for people with a mental disorder.</p> <p><b>Mental Health Officer (MHO)</b> is a person appointed by the Chief Psychiatrist to undertake functions under the Act.</p>

	<p><b>Reasonable Steps:</b> Actions that a delegate of the Chief Psychiatrist/Care Coordinator or MHO takes to tell the person that they must comply with their mental health order.</p>
<p>DETAILED DESCRIPTION</p>	<p><b>Use of Treatment Plan and Location Determination (TPLD)</b> Requirements to comply with the Mental Health Order must be explicit in the TPLD.</p> <p><b>All reasonable steps means</b> -steps that must be taken to provide the person who is non-compliant an opportunity to comply with the Mental Health Order.</p> <p>If a person can be located and contacted:</p> <p>Within 7 days of the contravention having been identified inform the person orally or in writing (preferably both) that failure to comply with the order may result in the person being apprehended and taken to an approved mental health facility/ approved community care facility for treatment care and support in accordance with their respective order and the treatment plan, location determination (TPLD).</p> <p>If every effort has been made to locate the person but the person cannot be located and there is reasonable belief that their last known address IS STILL their address;</p> <p>Advise the person in writing, to their last known address, that failure to comply with the order will result in the person being apprehended and taken to an approved mental health facility/ approved community care facility for treatment care and support in accordance with their respective order and the TPLD.</p> <p>If every effort has been made to locate the person but the person cannot be located and there is reasonable belief that their last known address is NO LONGER their address, proceed with contravention action.</p> <p><b>Authorisation</b> The delegate of the Chief Psychiatrist/Care Coordinator or MHO can authorise a contravention.</p> <p>Once the contravention is issued, the person in contravention can be detained by an authorised ambulance paramedic, MHO, doctor or police officer and taken to an approved mental health facility.</p>

<i>Doc Number</i>	<i>Issued</i>	<i>Review Date</i>	<i>Approved by</i>	<i>Page</i>
CPG24/001	Mar 2024	Mar 2026	Chief Psychiatrist	2 of 5

	<p><b>Reporting and documentation</b></p> <p>The following documentation must be completed in relation to a contravention:</p> <p>The person’s clinical record must include documentation of steps taken to inform the person (or if not contactable reasonable steps taken to contact the person), reasons requiring the detention and authorisation of apprehension.</p> <p>Within 24 hours of the detention, the delegate of the Chief Psychiatrist/Care Coordinator or Mental Health Officer must also advise the ACAT and the public advocate of the name of the person detained, the reasons requiring detention and the approved mental health facility where the person is detained.</p> <p><b>Interagency coordination</b></p> <p>If another agency (specifically ambulance or police) are required to assist in the contravention, they must also be provided with a copy of the authorisation of the contravention.</p> <p>If the contravention order is subsequently withdrawn (e.g. the person has complied with requirements of the Order after a Contravention Order was made and another agency notified), the other agency/ies must be notified immediately that the contravention order has been withdrawn or annulled.</p> <p><b>Best practice considerations:</b></p> <p>When making a TPLD, seek the persons view as to what steps they would want to occur if they ceased accepting treatment under their mental health order. This should include how the person would prefer to be contacted and any options for contact should the initial option prove unsuccessful. These decisions should be clearly documented in the clinical file and utilised to tell the person of their contravention.</p> <p>Advanced agreements may also be used to clearly document the persons preferences about what steps should be taken to tell the person they are in contravention of their mental health order.</p> <p>Clinicians must work with the person to identify whether they have a carer or other nominated person who should also be contacted/informed.</p>
IMPLEMENTATION	<p>Services will disseminate this guideline to all staff.</p> <p>A service-specific policy or procedure may be developed consistent with this Chief Psychiatrist’s guideline.</p>

<i>Doc Number</i>	<i>Issued</i>	<i>Review Date</i>	<i>Approved by</i>	<i>Page</i>
CPG24/001	Mar 2024	Mar 2026	Chief Psychiatrist	3 of 5

	A guideline comes into effect once notified on the ACT Legislation Register.
RECORDS MANAGEMENT	All records are managed in accordance with the <i>Health Records (Privacy &amp; Access) Act 1997 (ACT)</i> , <i>Territory Records Act 2002</i> and ACT Health Directorate policy and procedures. All guidelines will be published on the <a href="https://www.act.gov.au/office-of-the-chief-psychiatrist">Office of the Chief Psychiatrist   Health (act.gov.au)</a> website. All guidelines are notifiable instrument and are available on the ACT Legislation Register at <a href="https://www.act.gov.au/legislation-register">ACT Legislation Register</a> .
RELATED LEGISLATION	<i>Mental Health Act 2015</i> <i>Mental Health (Secure Facilities) Act 2016</i> <i>Children and Young People Act 2008</i> <i>Human Rights Act 2004</i> <i>Health Records (Privacy and Access) 1997</i> <i>Legislation Act 2011</i> <i>Public Advocate Act 2005</i> <i>Work Health and Safety Act 2011</i> <i>Carers Recognition Act 2021</i>
SUPPORTING DOCUMENTS	<a href="#"><u>National Quality and Safety Health Care Standards</u></a>