



Australian Capital Territory

Mental Health (Treatment and Care) Regulation 2003

SL2003-47

made under the

Mental Health (Treatment and Care) Act 1994

Republication No 4

Effective: 3 June 2011 – 11 December 2011

Republication date: 3 June 2011

Last amendment made by SL2011-14

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Mental Health (Treatment and Care) Regulation 2003*, made under the *Mental Health (Treatment and Care) Act 1994* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 3 June 2011. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 3 June 2011.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register (www.legislation.act.gov.au). For more information, see the home page for this law on the register.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



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R4
03/06/11

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Australian Capital Territory

Mental Health (Treatment and Care) Regulation 2003

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Part 1 Preliminary

1 Name of regulation

This regulation is the *Mental Health (Treatment and Care) Regulation 2003*.

3 Dictionary

The dictionary at the end of this regulation is part of this regulation.

Note 1 The dictionary at the end of this regulation defines certain terms used in this regulation.

Note 2 A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

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

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

Part 2 Interstate application of mental health laws

5 Notification of interstate agreements

An agreement entered into under the Act, section 48C (1) is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

6 Corresponding laws—Act, s 48D (1)

The following are corresponding laws for the Act, part 5A:

- (a) the *Mental Health Act 1990* (NSW);
- (b) the *Mental Health Act 1986* (Vic);
- (c) the *Mental Health Act 2000* (Qld).

7 Interstate custodial patients—Act, s 48D (2)

The following are interstate custodial patients for the Act, part 5A:

- (a) a person apprehended or detained under the NSW Act, chapter 4, part 2 (Involuntary admission to hospitals), division 1 (Admission to and detention in hospitals);
- (b) a person who is a continued treatment patient as defined in the NSW Act, schedule 1 (Dictionary of terms used in the Act);
- (c) a person who is a temporary patient as defined in the NSW Act, schedule 1;
- (d) a person who is subject to an involuntary treatment order under the Victorian Act, section 12 (Involuntary treatment orders—persons in the community) or section 12AA (Involuntary treatment orders—persons in approved mental health services);

- (e) a person—
 - (i) who is subject to a hospital transfer order under the Victorian Act, section 16 (3) (a) (Transfer of mentally ill prisoners); and
 - (ii) who is apprehended under the Victorian Act, section 43 (1) (Apprehension of involuntary patient absent without leave);
- (f) a person—
 - (i) who is subject to an order under the *Sentencing Act 1986* (Vic), part 5 (Mentally ill offenders); and
 - (ii) who is apprehended under the Victorian Act, section 43 (1);
- (g) a person who is apprehended under the Victorian Act, section 53 (Apprehension of security patient absent without leave);
- (h) a person who is apprehended under the Victorian Act, section 53AD (Apprehension of forensic patient absent without leave);
- (i) a person who is subject to a transfer order under the Victorian Act, section 93G (Transfer of patients from this State);
- (j) a person who is a classified patient under the Queensland Act, section 69 (Classified patients);
- (k) a person subject to an order under the Queensland Act, section 101 (Court may order person's detention in authorised mental health service);
- (l) a person subject to an order under the Queensland Act, section 108 (Making of involuntary treatment order) that is an order mentioned in that Act, section 109 (2) (a) (Category of order);

- (m) a person subject to the Queensland Act, section 185 (Apprehension of involuntary patients interstate);
- (n) a person subject to an order under the Queensland Act, section 273 (1) (b) (Orders about custody);
- (o) a person subject to an order under the Queensland Act, section 288 (Mental Health Court may make forensic order);
- (p) a person subject to an order under the Queensland Act, section 302 (Minister may make forensic order for persons subject to custody order);
- (q) a person subject to an order for detention in a stated authorised mental health service under the Queensland Act, section 337 (6) (Appeal powers).

**8 Corresponding people for interstate custodial patients—
Act, s 48D (3)**

For the Act, section 48D (3)—

- (a) an interstate custodial patient mentioned in section 7 (a) corresponds to a person being detained under the Act, section 38, with the detention having commenced at the time the person arrives at the place mentioned in section 12; and
- (b) an interstate custodial patient mentioned in another paragraph of section 7 corresponds to a person subject to a custody order under the Act, section 28, section 30, section 72 or section 74, as the case requires, that was made at the time specified in the interstate apprehension or transfer order.

9 Interstate non-custodial orders—Act, s 48D (4)

The following are interstate non-custodial orders for the Act, part 5A:

- (a) an order under the NSW Act, section 118 (Making of community counselling orders);

- (b) an order under the NSW Act, section 131 (Making of community treatment orders).

10 Recognition of interstate apprehension orders—Act, s 48P

It is a condition of recognition of an interstate apprehension order that the order complies with the interstate agreement under which it is issued and any applicable requirements of the relevant corresponding law.

11 People authorised to apprehend under interstate apprehension orders—Act, s 48Q (1) (d)

The following people are authorised to apprehend a person under an interstate apprehension order:

- (a) a mental health officer;
- (b) a doctor.

Note Police officers and people authorised under corresponding laws are also authorised (see Act, s 48Q (1) (c) and (d)).

12 Place to which people can be taken under interstate apprehension orders—Act, s 48R (e)

The only place in the ACT that a person apprehended under an interstate apprehension order can be taken to and detained at is The Canberra Hospital.

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this regulation.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- doctor
- under.

Note 3 Terms used in this regulation have the same meaning that they have in the *Mental Health (Treatment and Care) Act 1994* (see Legislation Act, s 148). For example, the following term is defined in the *Mental Health (Treatment and Care) Act 1994*, section 4:

- mental health officer.

interstate agreement means any of the following agreements about the interstate application of mental health laws:

- (a) the agreements dated 8 July 2002 and 23 November 2010 between the Minister for Health for the ACT and the Minister for Health of the State of Victoria (the ***Victorian agreement***);
- (b) the agreement dated 30 August 2002 between the Minister for Health for the ACT and the Minister for Health of the State of Queensland (the ***Queensland agreement***);
- (c) the agreement dated 6 May 2004 between the Minister for Health for the ACT and the Minister for Health of the State of Queensland (also the ***Queensland agreement***);
- (d) the agreement dated 18 November 2003 between the Minister for Health for the ACT and the Minister for Health of the State of New South Wales (the ***New South Wales agreement***).

interstate apprehension order means an interstate apprehension order under an interstate agreement.

NSW Act means the *Mental Health Act 1990* (NSW).

Queensland Act means the *Mental Health Act 2000* (Qld).

Victorian Act means the *Mental Health Act 1986* (Vic).

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

Endnotes

3 Legislation history

3 Legislation history

This regulation was originally the *Mental Health (Treatment and Care) Regulations 2003*. It was renamed under the *Legislation Act 2001*.

Mental Health (Treatment and Care) Regulation 2003 SL2003-47

notified LR 15 December 2003

s 1, s 2 commenced 16 December 2003 (LA s 75 (1))

remainder commenced 16 December 2003 (s 2)

as amended by

Mental Health (Treatment and Care) Amendment Regulations 2004 (No 1) SL2004-33

notified LR 16 August 2004

s 1, s 2 commenced 16 August 2004 (LA s 75 (1))

remainder commenced 17 August 2004 (s 2)

Mental Health (Treatment and Care) Amendment Regulation 2011 (No 1) SL2011-14

notified LR 2 June 2011

s 1, s 2 commenced 2 June 2011 (LA s 75 (1))

remainder commenced 3 June 2011 (s 2)

4 Amendment history

Name of regulation

s 1 am R3 LA

Commencement

s 2 om LA s 89 (4)

Interstate custodial patients—Act, s 48D (2)

s 7 am SL2004-33 s 4; pars renum R2 LA (see SL2004-33 s 5);
SL2011-14 s 4; pars renum R4 LA

Dictionary

dict def *interstate agreement* am SL2004-33 s 6; pars renum R2
LA (see SL2004-33 s 7); SL2011-14 s 5

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 16 Dec 2003	16 Dec 2003– 16 Aug 2004	not amended	new regulation
R2 17 Aug 2004	17 Aug 2004– 1 Nov 2004	SL2004-33	amendments by A2004-33
R3 2 Nov 2004	2 Nov 2004– 2 June 2011	SL2004-33	includes editorial amendments under Legislation Act

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