



Australian Capital Territory

# Mental Health (Secure Facilities) Act 2016

A2016-31

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Australian Capital Territory

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

**A2016-31**

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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:

## Part 1 Preliminary

### 1 Name of Act

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

### 2 Commencement

This Act commences on the day after its notification day.

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

### 3 Dictionary

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

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

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

*Note 2* A definition in the dictionary (including a signpost definition) 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 Act is explanatory and is not part of this Act.

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

## 5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The [Criminal Code](#), ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## 6 Application of Act

This Act applies to an approved mental health facility declared by the Minister under section 7 to be a secure mental health facility.

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

- (1) The Minister may declare an approved mental health facility to be a secure facility (a *secure mental health facility*).

*Note* The power to make a declaration includes the power to amend or repeal the declaration. The power to amend or repeal the declaration is exercisable in the same way, and subject to the same conditions, as the power to make the declaration (see [Legislation Act](#), s 46).

- (2) The Minister may declare an approved mental health facility to be a secure mental health facility only if the approved mental health facility—
  - (a) is conducted by the Territory; and
  - (b) provides for, or will provide for, the involuntary detention and treatment of people, including correctional patients and forensic patients.

- (3) A declaration is a notifiable instrument.

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

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

## 8 Terms used in Mental Health Act 2015

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

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

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## Part 2 Administration

### 9 Directions—secure mental health facilities

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

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

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

- (2) A SMHF direction must be consistent with—
- (a) this Act and the *Mental Health Act 2015*; and
  - (b) if the direction applies to a health practitioner—the registration standards for the health practitioner.
- (3) A worker at a secure mental health facility must comply with a SMHF direction.

*Note* **Worker**—see the dictionary.

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

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

- (5) In this section:

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

## 10 Prohibited things

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

### Examples—prohibited thing

- a mobile phone
- a laptop or other electronic communication device
- a knife

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

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

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

## 11 Directions to workers

- (1) The person in charge of a secure mental health facility may direct a worker at the facility to give the assistance that the person in charge believes on reasonable grounds is necessary and reasonable for the security and good order of the secure mental health facility.
- (2) The worker must comply with the direction.
- (3) If the person in charge of a secure mental health facility directs a worker who is an authorised person to assist an authorised health practitioner in a clinical area of the facility, the person in charge must—
  - (a) make a written record of the direction; and
  - (b) make the record available for inspection by the director-general.

## 12 Director-general—delegations

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

### Example

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

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

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

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

## 13 Treatment of child or young person patient

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

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

## **Part 3**                      **Contact**

### **Division 3.1**              **Contact generally**

#### **14**              **Meaning of *contact***

In this Act:

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

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

**Examples—other electronic communication**

- Skype
- Facetime

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

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

**Examples—written electronic communication**

- SMS
- email

#### **15**              **Contact—general considerations**

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

- (a) the benefits of patients maintaining contact with family, friends and others;
- (b) the need to protect the privacy of patients;
- (c) the need to protect the safety of patients, mental health officers, authorised health practitioners, authorised people and other people who work at or visit a secure mental health facility;

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

## 16 Contact with family and others—generally

- (1) The director-general must ensure, as far as practicable, that adequate opportunities are provided for patients to be able to contact family members, friends and others.
- (2) In particular, the director-general must ensure that adequate facilities are available for a patient to contact an accredited person.

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

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

### **Examples—communications facilities**

- telephones
- internet access

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

- (4) Subsection (1) is subject to the following sections:
  - (a) section 17 (Limits on contact with others);
  - (b) section 20 (Request by others for no contact with patient);
  - (c) section 21 (Patient contact with others—court-ordered restrictions).

## **17 Limits on contact with others**

- (1) The director-general may, in consultation with the chief psychiatrist, limit a patient's contact with others if the director-general believes on reasonable grounds that the limit is necessary and reasonable to avoid prejudicing the effectiveness of the patient's treatment, care or support.
- (2) The director-general must not impose a limit on contact by the patient with someone authorised under a territory law to communicate with the patient.

### **Examples**

- an official visitor
- the public trustee and guardian

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

- (3) As soon as practicable after imposing a limit on contact by a patient with others, the director-general must explain to the patient, in a way the patient is most likely to understand—
  - (a) the nature of the limit; and
  - (b) the period for which the limit will be in effect; and
  - (c) the reason for imposing the limit.
- (4) A limit must not be imposed for longer than 7 days.
- (5) Subsection (3) does not prevent a further limit being imposed immediately after the limit previously imposed ceases to be in effect.

## 18 Limits on contact with others—register

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

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

- (2) The register must include the following information:
- (a) the name of the patient in relation to whom contact is limited;
  - (b) the details of the decision, including the date it was made, the length it is imposed for and the reasons for the decision;
  - (c) anything else the director-general considers necessary;
  - (d) anything else prescribed by regulation.
- (3) The register may be kept in any form, including electronically, that the director-general decides.
- (4) The director-general may correct a mistake, error or omission in the register.
- (5) The register must be available for inspection, on request, by a commissioner exercising functions under the *Human Rights Commission Act 2005*.

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

- the children and young people commissioner
- the disability and community services commissioner
- the discrimination commissioner
- the health services commissioner
- the public advocate
- the victims of crime commissioner
- the human rights commissioner.

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

- (1) This section applies if a patient tells the person in charge of a secure mental health facility the patient does not want to be contacted by a stated person.
- (2) The person in charge of the facility must take reasonable steps to prevent the stated person contacting the patient.

### **Examples—reasonable steps**

- 1 not allowing the stated person to visit the patient
- 2 not delivering mail from the stated person to the patient
- 3 not giving the patient telephone messages from the stated person

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

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

- (3) However, if the stated person is a health practitioner involved in the patient's care or treatment, the person in charge of the facility must not prevent the stated person contacting the patient unless satisfied on reasonable grounds there are good reasons why the stated person should not contact the patient.
- (4) The patient may, at any time, tell the person in charge of the facility if the patient wants to again be contacted by the stated person.
- (5) The director-general may make a SMHF direction about steps to be taken for subsection (2).

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

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

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

- (2) If the person in charge of the facility is satisfied there are good reasons why the patient should not contact the complainant, the person in charge of the facility must—
- (a) tell the patient about the complainant’s request; and
  - (b) take reasonable steps to prevent the patient contacting the complainant.

**Example—good reason**

inappropriate or threatening behaviour towards the complainant

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

- (3) The person in charge of the facility must keep all mail from the patient addressed to the complainant until—
- (a) the complainant tells the person in charge that the patient may contact the complainant; or
  - (b) the patient is discharged from the facility.

*Note* The name and contact details of the complainant must be recorded in the patient’s health record (see s 22).

- (4) If the patient is discharged from the facility, the person in charge of the facility must give the mail to—
- (a) if the patient is discharged to a correctional centre—the corrections director-general; or
  - (b) in any other case—the patient.

*Note 1* **Correctional centre**—see the [Corrections Management Act 2007](#), dictionary.

*Note 2* **Corrections director-general**—see the [Mental Health Act 2015](#), dictionary.

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

- (1) This section applies if a court orders that a patient is not to contact another person (the *non-contactable person*).
- (2) The director-general must take reasonable steps to prevent the patient contacting the non-contactable person.

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

- (3) The person in charge of the secure mental health facility must keep all mail from the stated patient addressed to the non-contactable person until—
  - (a) the order ends or the court orders otherwise; or
  - (b) the patient is discharged from the facility.
- (4) However, if the patient is a correctional patient returning to a correctional centre, the person in charge of the facility must give all mail from the patient addressed to the non-contactable person to the corrections director-general.

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

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

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

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

- (a) if a decision is made under section 17 (1) (Limits on contact with others) to limit a patient's contact with others—the decision, the reason for the decision and the period for which contact is limited;
- (b) if section 19 (Patient may request no contact with stated person) applies to the patient—the names and contact details of the people the patient does not want to be contacted by;

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

## **Division 3.2 Contact—monitoring electronic communications**

### **23 Monitoring electronic communications**

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

(4) In this section:

*capture visual data*—a person *captures visual data* of another person if the person captures moving or still images of the other person by a camera or any other means in such a way that—

- (c) a recording is made of the images; or
- (d) the images are capable of being transmitted in real time with or without retention or storage in a physical or electronic form; or
- (e) the images are otherwise capable of being distributed.

## **24 Electronic communications—directions**

The director-general may make a SMHF direction about access to and supervision of electronic communication facilities in a secure mental health facility.

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

## **Division 3.3 Contact—monitoring mail**

### **25 Monitoring mail**

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

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

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

- (4) The director-general must—
  - (a) before searching a patient’s mail—tell the patient about the director-general’s suspicion and that the patient’s mail will be searched; and
  - (b) allow the patient, or a person named by the patient, to be present when the mail is searched.
- (5) The director-general must record in the patient’s health record the details of a search conducted under this section including—
  - (a) the date of the search; and
  - (b) the reasons for the search; and
  - (c) the outcome of the search.
- (6) In this section:

*mail*, of a patient, means—

  - (a) mail addressed to the patient; or
  - (b) mail from the patient addressed to another person.

*search*, a patient’s mail—

  - (a) includes search the mail—
    - (i) with a device using electronic or other technology; and
    - (ii) by physical means; but
  - (b) does not include reading any correspondence included in the mail.

## **26 Mail searches—consequences**

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

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

(4) In this section:

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

## **27 Searched mail—register**

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

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

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

(b) the date the mail was searched;

(c) whether the mail contained a prohibited thing;

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

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

(f) anything else prescribed by regulation.

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

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

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

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

- the children and young people commissioner
- the disability and community services commissioner
- the discrimination commissioner
- the health services commissioner
- the public advocate
- the victims of crime commissioner
- the human rights commissioner.

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

## Division 3.4 Contact—visitors

### 28 Visiting conditions—direction—general

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

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

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

## **29 Visiting conditions—notice**

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

### **Examples**

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

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

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

## **30 Visiting conditions—compliance**

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

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

### 31 Visits by accredited people

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

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

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

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

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

### 32 Visits by public trustee and guardian etc

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

(d) a person prescribed by regulation.

*Note 1* The following commissioners exercise functions under the [Human Rights Commission Act 2005](#):

- the children and young people commissioner
- the disability and community services commissioner
- the discrimination commissioner
- the health services commissioner
- the public advocate
- the victims of crime commissioner
- the human rights commissioner.

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

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

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

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

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

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

**Examples**

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

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

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

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

- (1) This section applies if the director-general has made a decision under section 17 (2) (Limits on contact with others) to restrict contact with a patient.
- (2) The director-general or the person in charge of the facility may require a person (an *intending visitor*) wanting to visit the patient to make an appointment to do so.
- (3) The director-general or person in charge of the facility may refuse to allow the intending visitor to visit the patient if the director-general believes on reasonable grounds that the refusal is necessary and reasonable to avoid prejudicing the effectiveness of the patient's treatment, care or support.
- (4) If the person in charge of the facility refuses to allow an intending visitor to visit the patient, the person must, as soon as practicable, give the intending visitor and the director-general written notice of the decision and the reasons for it.

### **34 Directions to visitors**

- (1) The director-general may, orally or in writing, give a direction to a visitor at a secure mental health facility to do, or not do, something if the director-general believes on reasonable grounds that the direction is necessary and reasonable—
  - (a) to ensure compliance with the visiting conditions; or
  - (b) for the safety of other patients or staff at the facility.
- (2) A direction under subsection (1) may include a direction to—
  - (a) not enter the facility; or
  - (b) leave the facility.
- (3) If a direction is given in relation to a visitor who is a child, the director-general must tell the child's parent or someone else with parental responsibility for the child about the direction and the reasons for it.

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

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

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

- (1) A person must not, without the director-general's approval—
  - (a) take a prohibited thing into a secure mental health facility; or
  - (b) give or send a prohibited thing to a patient in a secure mental health facility.

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

- (2) The director-general may direct a person who contravenes subsection (1) to—
  - (a) if possession of the prohibited thing is not an offence—leave the prohibited thing in a secure place provided at the entrance to the secure mental health facility; or
  - (b) leave the secure mental health facility.
- (3) In this section:

*send* a prohibited thing to a patient in a secure mental health facility includes throw, drop or propel the prohibited thing into the facility.

### **36 Visitors—searches**

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

*Note* *Frisk search, ordinary search* and *scanning search*—see s 39.
- (2) Also, an authorised person may conduct a scanning search, frisk search or ordinary search of a visitor in a secure mental health facility if the authorised person suspects on reasonable grounds that the visitor is carrying—
  - (a) a prohibited thing; or
  - (b) anything else that creates, or is likely to create, a risk to—
    - (i) the personal safety of a patient or anyone else; or
    - (ii) security or good order at the secure mental health facility.

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

**Example par (a)—secure place**

a lockable cupboard

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

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

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

- staff member
- tradesperson
- health practitioner

### **37 Searches of visitors—requirements**

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

### **38 Searches of visitors—child visitors**

- (1) If a visitor is a child, an authorised person—
  - (a) may only conduct a scanning search of the child; and
  - (b) must not conduct any other search of the child.
- (2) If an authorised person suspects on reasonable grounds that a visitor who is a child is carrying something mentioned in section 36 (2), the authorised person must—
  - (a) direct the child—
    - (i) not to enter the secure mental health facility; or
    - (ii) if the child is in the facility—to leave the facility; and

- (b) tell the person with parental responsibility for the child about the direction and the reasons for it; and

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

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

## Part 4 Searches of patients

### Division 4.1 Searches of patients—preliminary

#### 39 Definitions

In this Act:

*frisk search* means—

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

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

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

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

#### Examples—scanning searches

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

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

## **Division 4.2                      Scanning, frisk and ordinary searches of patients**

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

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

**Examples—when search may be conducted**

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

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

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

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

**41 Scanning, frisk and ordinary searches—requirements**

- (1) An authorised health practitioner may conduct a scanning search, frisk search or ordinary search of a person under section 40 only if—
  - (a) the authorised health practitioner is of the same sex as the person to be searched; or
  - (b) if that is not practicable—another person of the same sex as, or a sex nominated by, the person to be searched is present while the search is conducted.
- (2) The authorised health practitioner must conduct the least invasive kind of search practicable.
- (3) The authorised health practitioner must conduct the search—
  - (a) in a way that provides reasonable privacy for the person; and
  - (b) as quickly as practicable.

**42 Scanning, frisk and ordinary searches—record**

If an authorised health practitioner conducts a search of a patient under this division, the authorised health practitioner must record the following in the patient’s health record:

- (a) the date and time of the search;
- (b) the reason for the search;
- (c) the kind of search conducted;
- (d) the outcome of the search.

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

## **Division 4.3 Strip searches**

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

In this division:

*seizeable item* means anything that—

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

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

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

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

- (2) The director-general may direct an authorised health practitioner to strip search a patient if the director-general suspects on reasonable grounds that—
  - (a) the patient has a seizeable item concealed on the patient; and
  - (b) a less intrusive search will not detect the item.
- (3) To remove any doubt, a strip search of a patient may be conducted immediately after any scanning search, frisk search or ordinary search of the patient.
- (4) The director-general must make a SMHF direction in relation to strip searches under this section.

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

#### **45 Strip searches—presence of authorised health practitioners**

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

##### **Examples**

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

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

#### **46 Strip searches—general rules**

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

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

#### **47 Strip search—record**

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

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

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

## Division 4.4 Treatment—patient has ingested or concealed something

### 48 Treatment if patient has ingested or concealed thing—general

- (1) This section applies if the director-general suspects on reasonable grounds that a patient—
  - (a) has ingested or inserted something in the patient’s body that may jeopardise the patient’s health or wellbeing; or
  - (b) has a prohibited thing concealed in or on the patient’s body that may be used in a way that may pose a risk to the security or good order of the secure mental health facility.
- (2) The director-general must arrange for a doctor to—
  - (a) examine the patient to determine whether the patient has ingested or inserted something in, or concealed a prohibited thing in or on, the patient’s body; and
  - (b) if necessary—
    - (i) administer the treatment the doctor considers appropriate or necessary to remove the thing; or
    - (ii) transfer the patient to another facility for treatment to remove the thing.
- (3) In this section:  
**health facility**—see the *Health Act 1993*, section 6.

**49 Treatment if patient has ingested or concealed thing—  
record etc**

- (1) This section applies if a patient receives treatment under section 48.
- (2) The director-general must—
  - (a) record the following in the patient's health record:
    - (i) the date and time of the treatment;
    - (ii) the reason for the treatment;
    - (iii) the kind of treatment administered;
    - (iv) the outcome of the treatment; and
  - (b) notify the public advocate.

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

**50 Searches—premises and personal property etc**

- (1) The director-general may, at any time, conduct a search of any part of a secure mental health facility if the director-general believes on reasonable grounds that it is prudent to conduct the search to protect—
  - (a) the safety of anyone at the secure mental health facility; or
  - (b) security or good order at the secure mental health facility.
- (2) To remove any doubt, a search under subsection (1) may include a search of—
  - (a) the personal property or room of a patient in the secure mental health facility; or
  - (b) a vehicle used to transport a patient.

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

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

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

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

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

**52 Searches—use of force**

- (1) The director-general may use force—
  - (a) to carry out a search under this part; or
  - (b) to prevent the loss, destruction or contamination of anything seized, or that may be seized, during the search.
- (2) However, the director-general may use force only in accordance with division 4.8 (Use of force).

**Division 4.6 Seizing property**

**53 Seizing property—general**

- (1) The director-general may seize—
  - (a) anything found at a secure mental health facility, whether or not in a person's possession, that the director-general suspects on reasonable grounds jeopardises or is likely to jeopardise—
    - (i) security or good order at the secure mental health facility;  
or
    - (ii) the safety of anyone at the secure mental health facility;  
or
  - (b) anything found at a secure mental health facility, whether or not in a person's possession, that the director-general suspects on reasonable grounds is being used, or is intended, for the commission of an offence; or
  - (c) a prohibited thing found on a patient or in a patient's custody or possession, unless the patient has the director-general's written approval to possess the thing; or
  - (d) a prohibited thing found in mail addressed to a patient that is not yet in the patient's possession.

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

#### **54 Receipt for things seized**

- (1) As soon as practicable after a thing is seized under this part, the director-general must give a receipt for it to—
- (a) the owner of the thing; or
  - (b) if the owner cannot be identified after reasonable inquiries (given the thing's apparent value)—the person from whom the thing was seized.
- (2) The receipt must include the following:
- (a) a description of the thing seized;
  - (b) an explanation of why the thing was seized;
  - (c) a statement about the effect of section 55;
  - (d) anything else prescribed by regulation.
- (3) In this section:

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

#### **55 Forfeiture of things seized**

- (1) A thing seized under this part is forfeited to the Territory if the director-general decides on reasonable grounds—
- (a) that—
    - (i) after making reasonable inquiries (given the thing's apparent value), the owner of the thing cannot be found;or

- (ii) after making reasonable efforts (given the thing's apparent value), the thing cannot be returned to the owner; or
- (b) that—
  - (i) possession of the thing by a patient is an offence; or
  - (ii) it is necessary to keep the thing to stop it being used for the commission of an offence; or
  - (iii) the thing is inherently unsafe.
- (2) The director-general may deal with a thing forfeited to the Territory under this section, or dispose of it, as the director-general considers on reasonable grounds to be appropriate.
- (3) However, subsection (2) is subject to any order under the [Crimes Act 1900](#), section 249 (Seizure of forfeited articles).

**Examples—s (2)**

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

*Note 1* The [Crimes Act 1900](#) also provides for articles forfeited under any law in force in the ACT to be seized by a member of the police force, taken before the Magistrates Court and for the court to order disposal of the article by the public trustee (see that Act, s 249 and s 250).

*Note 2* The [Uncollected Goods Act 1996](#) provides generally for the disposal of uncollected goods, including goods abandoned on premises controlled by the Territory.

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

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

- (1) If a thing seized under this Act is not forfeited, the director-general must return it to its owner—
  - (a) not later than the end of 6 months after the day it was seized; or
  - (b) if a proceeding for an offence involving the thing is started within the 6-month period—at the end of the proceeding and any appeal from, or the review of, the proceeding.
- (2) However, if the thing was being retained as evidence of an offence and the director-general believes on reasonable grounds that its retention as evidence is no longer necessary, the director-general must return it immediately.
- (3) In this section:  
*owner*, of a thing—see section 54 (3).

**57                    Application for order disallowing seizure**

- (1) A person claiming to be entitled to anything seized under this Act may apply to the Magistrates Court within 10 days after the day of the seizure for an order disallowing the seizure.
- (2) The application may be heard only if the applicant has served a copy of the application on the director-general.  
*Note*     For how documents may be served, see the [Legislation Act](#), pt 19.5.
- (3) The director-general is entitled to appear as respondent in the hearing of the application.

**58                    Order for return of seized thing**

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

- (2) The Magistrates Court must make an order disallowing seizure if satisfied that—
  - (a) the applicant would, apart from the seizure, be entitled to the return of the seized thing; and
  - (b) the thing is not connected with an offence against this Act; and
  - (c) possession of the thing by the person would not be an offence.
- (3) The Magistrates Court may also make an order disallowing the seizure if satisfied there are exceptional circumstances justifying the making of the order.
- (4) If the Magistrates Court makes an order disallowing the seizure, the court may make 1 or more of the following ancillary orders:
  - (a) an order directing the director-general to return the thing to the applicant or to someone else who appears to be entitled to it;
  - (b) if the thing cannot be returned or has depreciated in value because of the seizure—an order directing the Territory to pay reasonable compensation;
  - (c) an order about the payment of costs in relation to the application.

## **Division 4.7                      Searches—register**

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

- (1) The director-general must keep a register of searches carried out at a secure mental health facility under this part.
- (2) The register must include the following information in relation to each search:
  - (a) the name of the patient who was searched or whose personal property or room was searched;
  - (b) the name of each person present during the search;

- (c) the date the patient or the patient's personal property or room was searched;
  - (d) the reason for the search;
  - (e) the kind of search undertaken;
  - (f) the outcome of the search;
  - (g) whether a prohibited thing or thing that may affect the security or good order of, or the safety of a patient or other person at, the facility was found during the search;
  - (h) whether anything was seized during the search and, if so, details of the thing seized;
  - (i) whether the search revealed information about the commission of an offence and, if so, whether the information was given to the chief police officer;
  - (j) if the patient received treatment under section 48 (Treatment if patient has ingested or concealed thing—general)—
    - (i) the treatment the patient received; and
    - (ii) where the patient received the treatment; and
    - (iii) who administered the treatment; and
    - (iv) the outcome of the treatment;
  - (k) anything else the director-general considers relevant;
  - (l) anything else prescribed by regulation.
- (3) The register may be kept in any form, including electronically, that the director-general decides.
- (4) The director-general may correct a mistake, error or omission in the register.

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

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

- the children and young people commissioner
- the disability and community services commissioner
- the discrimination commissioner
- the health services commissioner
- the public advocate
- the victims of crime commissioner
- the human rights commissioner.

- (6) In this section:

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

## **Division 4.8 Use of force**

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

- (1) The director-general must ensure, as far as practicable, that the use of force in relation to the management of patients in a secure mental health facility is always—
- (a) a last resort; and
  - (b) in accordance with this division.
- (2) Without limiting section 9 (Directions—secure mental health facilities), the director-general must make a SMHF direction in relation to the use of force, including provision in relation to the following:
- (a) the circumstances, and by whom, force may be used;

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

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

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

## **61 Authorised use of force**

- (1) An authorised health practitioner may use force that is necessary and reasonable for this Act to act under section 52 (Searches—use of force).
- (2) However, an authorised health practitioner may use force only if the authorised health practitioner believes on reasonable grounds that the purpose for which force may be used cannot be achieved in another way.

## **62 Application of force**

- (1) An authorised health practitioner may use force under this division only if the authorised health practitioner—
  - (a) gives a clear warning of the intended use of force; and
  - (b) allows enough time for the warning to be observed; and
  - (c) uses no more force than is necessary and reasonable in the circumstances; and
  - (d) uses force, as far as practicable, in a way that reduces the risk of causing death or grievous bodily harm.

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

**Example—urgent circumstances**

the patient is assaulting someone or engaging in self-harm

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

**63 Medical examination after use of force**

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

**64 Use of force—record**

- (1) The director-general must keep a record of any incident involving the use of force under this division.
- (2) The record must—
- (a) include details of the incident, including the circumstances, the decision to use force and the force used; and
  - (b) be available for inspection, on request, by a commissioner exercising functions under the [Human Rights Commission Act 2005](#).

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

- the children and young people commissioner
- the disability and community services commissioner
- the discrimination commissioner
- the health services commissioner
- the public advocate

- the victims of crime commissioner
  - the human rights commissioner.
- (3) The director-general must give a copy of the record to the public advocate and an official visitor.

**65 Use of force—register**

- (1) The director-general must keep a register of any incident involving the use of force under this division.
- (2) The register must include the following information in relation to each incident involving the use of force:
- (a) the name of the patient involved in the incident;
  - (b) the name of each person present during the incident;
  - (c) the date force was used on the patient;
  - (d) the reason for the use of force;
  - (e) the force used;
  - (f) the injury caused, if any;
  - (g) if someone died as a result of the use of force, the date and circumstances of the death;
  - (h) anything else the director-general considers relevant;
  - (i) anything else prescribed by regulation.
- (3) The register may be kept in any form, including electronically, that the director-general decides.
- (4) The director-general may correct a mistake, error or omission in the register.

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

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

- the children and young people commissioner
- the disability and community services commissioner
- the discrimination commissioner
- the health services commissioner
- the public advocate
- the victims of crime commissioner
- the human rights commissioner.

## Part 5 Notification and review of decisions

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

In this part:

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

### 67 Reviewable decision notices

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

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

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

- the children and young people commissioner
- the disability and community services commissioner
- the discrimination commissioner
- the health services commissioner
- the public advocate
- the victims of crime commissioner
- the human rights commissioner.

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

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

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

## 68 Applications for review

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

- (a) a commissioner exercising functions under the *Human Rights Commission Act 2005*;
- (b) an entity mentioned in schedule 1, column 4 in relation to the decision;
- (c) any other person whose interests are affected by the decision.

*Note* If a form is approved under the *ACT Civil and Administrative Tribunal 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).

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

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

- (4) In this section:

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

## **70 Authorised people—functions**

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

**71 Damage etc to be minimised**

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

**72 Identity cards**

- (1) The director-general must give an authorised person an identity card stating the person's name and that the person is an authorised person.
- (2) The identity card must show—
  - (a) a recent photograph of the authorised person; and
  - (b) the card's date of issue and expiry; and
  - (c) anything else prescribed by regulation.

- (3) A person commits an offence if the person—
- (a) stops being an authorised person; and
  - (b) does not return the person's identity card to the director-general as soon as practicable (but not later than 7 days) after the day the person stops being an authorised person.

Maximum penalty: 1 penalty unit.

- (4) Subsection (3) does not apply to a person if the person's identity card has been—
- (a) lost or stolen; or
  - (b) destroyed by someone else.

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

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

## Part 7 Miscellaneous

### 73 Prohibited things—tradespeople

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

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

### 74 Health care

- (1) The director-general must ensure that—
  - (a) patients have a standard of health care equivalent to that available to other people in the ACT; and
  - (b) arrangements are made to ensure the provision of appropriate health services for patients.
- (2) In particular, the director-general must ensure that patients have access to—
  - (a) regular health checks; and
  - (b) timely treatment where necessary, particularly in urgent circumstances; and
  - (c) hospital care where necessary; and

- (d) as far as practicable—
  - (i) specialist health services from health practitioners; and
  - (ii) necessary health care programs, including rehabilitation programs.
- (3) A regulation may make provision in relation to health services for patients, including provision about the following:
  - (a) appointments for patients with health practitioners;
  - (b) security arrangements for patients visiting health practitioners or other health facilities, particularly outside the secure mental health facility.

## **75 Protection of officials from liability**

- (1) An official is not civilly liable for conduct engaged in honestly and without recklessness—
  - (a) in the exercise of a function under this Act; or
  - (b) in the reasonable belief that the conduct was in the exercise of a function under this Act.
- (2) Any civil liability that would, apart from this section, attach to the official attaches instead to the Territory.
- (3) In this section:  
***conduct*** means an act or omission to do an act.

*official* means—

- (a) the chief psychiatrist; or
- (b) the person in charge of a secure mental health facility; or
- (c) anyone else exercising a function under this Act.

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

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

## **76 Determination of fees**

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

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

- (2) A determination is a disallowable instrument.

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

## **77 Approved forms**

- (1) The Minister may approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

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

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

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

**78 Regulation-making power**

The Executive may make regulations for this Act.

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

**79 Review of Act**

- (1) The Minister must review the operation of this Act as soon as practicable after the end of its 3rd year of operation.
- (2) The Minister must present a report of the review to the Legislative Assembly within 3 months after the day the review is started.
- (3) This section expires 5 years after the day it commences.

## Schedule 1 Reviewable decisions

(see pt 5)

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

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| <b>column 1<br/>item</b> | <b>column 2<br/>section</b> | <b>column 3<br/>decision</b>   | <b>column 4<br/>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<br>patient's guardian<br>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

- mental health officer
- nominated person
- official visitor (see s 208)
- transfer direction (see s 136)
- visitable place (see s 208).

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

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

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

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

**Examples—health practitioner**

- nurse
- nurse practitioner

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

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

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

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

***frisk search***—see section 39.

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

***ordinary search***—see section 39.

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

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

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

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

***scanning search***—see section 39.

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

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

***SMHF direction***—see section 9.

***visiting conditions***, at a secure mental health facility, means conditions included in a SMHF direction made under section 28 in relation to the facility.

***visitor***, in relation to a secure mental health facility, includes a person wishing to enter the facility as a visitor.

***worker***, at a secure mental health facility, means a person working at the facility, whether as a public employee, contractor, volunteer or otherwise.

***young person***—see the *Children and Young People Act 2008*, 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 20 June 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).

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I certify that the above is a true copy of the Mental Health (Secure Facilities) Bill 2016, which was passed by the Legislative Assembly on 9 June 2016.

Clerk of the Legislative Assembly

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