

Chief Psychiatrist's Report: Executive Summary

Review into care, treatment and support provided to people deemed not guilty because of mental impairment and released from custody into the care of mental health services

Background

On 18 September 2023 an incident occurred when an inpatient at the Gwanggall Mental Health Unit went to the Australian National University and allegedly assaulted multiple people. The inpatient had been granted approved leave from the mental health facility.

At the request of the ACT Minister for Mental Health, the Chief Psychiatrist undertook a review of the circumstances surrounding the incident.

This review was undertaken in 2 parts:

1. A Special Purpose Quality Assurance Committee was formed under Notifiable Instrument NI2023-628 for the purpose of undertaking a clinical review of the care and treatment provided to the person at the centre of the incident. The results of this review cannot be shared due to existing ACT legislation, including Health Records (Privacy and Access) Act 1997 and Health Act 1993.
2. An expanded review into reform of care, treatment, and support for people who are found not guilty because of mental impairment and are released from custody into the care of mental health services. This expanded review included a detailed review of legislation and practice in other jurisdictions in addition to extensive interviews with experts across all sectors of the ACT Health, Justice and Community Services sectors and consumers and carers with lived experience.

The expanded review panel was led by the ACT Chief Psychiatrist Dr Dinesh Arya with the support of the following independent external experts:

- Distinguished Professor James Ogloff AM, Clinical and Forensic Psychologist
- Dr John Crawshaw, New Zealand's Director of Mental Health and Forensic Psychiatrist
- Dr Juliet Lucy, Barrister and Senior NSW Civil and Administrative Tribunal Member
- Ms Lisa Kelly, CEO, Carers ACT

This executive summary reflects the expanded review and its recommendations.

Review findings

The Chief Psychiatrist's report found that all public service agencies, especially the public mental health services are providing high-quality care and support to people who are deemed not guilty because of mental impairment and released from custody into the care of mental health services. The panel has made 35 recommendations to strengthen legislation, clinical care and leave processes for improving effective and safe mental health care.

The findings and recommendations are summarised in this document. More information can be found in the full-length report which is available at <https://health.act.gov.au/sites/default/files/2024-02/Chief%20Psychiatrist%27s%20Report.pdf> Report recommendation numbers as they appear in the full report are noted in parenthesis next to each recommendation.

Report recommendations

Legislative recommendations

The review compared legislation and practice with other jurisdictions. The panel identified recommendations for changes in ACT legislation which would better support agencies involved in the treatment, care or management of persons placed on a Conditional Release Order (CRO). A CRO is issued by the ACT Civil and Administrative Tribunal (ACAT) after a verdict of not guilty because of a mental impairment. A particularly important area that the panel identified was the powers available to ACAT under a CRO. CROs do not have the power to authorise involuntary treatment, detention or restriction.

Recommendations:

- Clarify conditions that can be imposed under a conditional release order; If conditions are considered necessary for the persons because of the harm the person may pose to self, others, or the community, that these conditions should be made under an involuntary order (2 & 15)
- If non-compliance with treatment is likely to increase the risk the person may pose to others, then ACAT should have the power to make a concurrent forensic mental health order to enable involuntary treatment (3)
- Make a requirement that ACAT must have a comprehensive forensic psychiatric report provided to them which includes considerations relating to risk of harm to others (and any other relevant criminogenic factors) (6 & 13)
- Update legislation to include what ACAT must consider when making, varying or revoking conditions (7)
- Amend legislation to ensure that there is legal authority for the person to be apprehended and detained where they have breached conditions of their CRO, particularly if urgent intervention is required (31 & 35)

- Specify that either the presidential member of ACAT or a second member of ACAT must be a forensic mental health professional when reviewing the detention, conditions or release of a person on a CRO (8 & 9)
- Amend legislation to state that a person representing the interests of community safety (such as the Victims of Crime Commissioner or the Director of Public Prosecutions) is notified and given the right to appear and give evidence for CRO related hearings. The person representing community safety at ACAT hearings must also be provided with necessary information by the police and ACT Corrective Services to inform them of potential risk issues. ACAT should also be provided with this information (11 & 12)
- ACAT should notify and give carers the right to appear and give evidence at hearings when the identity of the carer is known and the carer meets the definition of a Carer as defined by the Carers Recognition Act 2010 (10)
- Harmonise sections in the Crimes Act and Mental Health Act to ensure consistency of terminology and provide guidance about referral options. It is recommended that guidance be given in the *Crimes Act 1900* to the courts about the circumstances where the court should:
 - a) Make an order that the accused be detained for immediate review; or
 - b) The circumstances in which the court should make an order that the person submit to the jurisdiction of the ACAT to allow the ACAT to make an involuntary mental health order in addition to the CRO (1 & 4)

Clinical recommendations

The review examined the National Principles relating to Persons found Unfit to Plead or Not Guilty Due to a Mental Impairment¹ with information provided by stakeholders and available written documentation. These national principles reflect a commitment to safeguarding the rights of individuals with cognitive or mental health impairment while addressing concerns related to community safety.

Recommendations:

- Assessment and treatment should follow best practice forensic assessment and treatment principles. Treatment for the persons prior and current risk of offending (commonly referred to as offense specific intervention) should occur. The principles, assessments and treatments should be reflected in the Model of Care for the Health Service as well as individual treatment plans (23)

¹ Department AGs. The National Statement of Principles Relating to Persons Unfit to Plead or Not Guilty by Reason of Cognitive or Mental Health Impairment
Canberra; 2019 9 August 2019.

- Every person should have a comprehensive forensic mental health assessment, risk assessment and management plan in effect. These documents must be updated frequently and form the basis of reports to decision making bodies such as ACAT and the leave panel. These documents should follow a standardised template and should be utilised to comprehensively record and capture relevant information (20 & 21)
- Documents and plan are updated on a three-monthly basis (or sooner if there is a significant change), and these documents should be audited by the health services for timeliness and completion (22)
- Decision making about the person and the level of restriction that they are placed under by health services should consider their broader circumstances, including their mental health, treatment compliance, insight and risk of harm to others (24)
- Submissions to ACAT by health services should be structured to ensure that comprehensive forensic mental health assessments are provided including the person's historical information, risk assessment and any collateral information which may be relevant to understand the person's mental health and any risk they may pose. To support this, a template should be developed for clinicians to follow, and the Chief Psychiatrist should issue an advisory note (18, 19 & 5)

Leave recommendations

ACAT is the initial decision maker for conditions related to leave for persons subject to a CRO. At times, ACAT includes a condition that the person may have leave from the facility, as approved by the Dhulwa and Gawanggal leave panel. The leave panel is a function of the health service and is staffed by a panel of health professionals from the facilities. A CRO does not give authority for the person to be detained by any person.

The report made multiple recommendations to improve processes around leave management. These are intended to support community safety, promote effective communication between agencies and safeguard the person's individual human rights.

Recommendations:

- Clarify the legislation relating to detention and leave from a facility when a person is under a CRO. A person cannot be detained under a CRO in the absence of other orders, including in the instance of a leave revocation. Legislation must ensure that it is clear who and how leave can be cancelled under a CRO (28)
- The leave panel within health services should have an independent chair who has forensic mental health expertise. The leave panel should also include at least one independent member who is able to provide input about community safety (26 & 27)
- The health services must provide a report to ACAT when making decisions about leave (29)

- The health services should review their policies regarding Missing Persons to ensure they reflect inpatients at Gawanggal Mental Health Unit (30)
- A risk rating or 'flagging' system should be developed in consultation between police, ambulance and health services to promote effective triage and response. To support this, a template should also be developed for health staff to communicate information when notifying police and ambulance services that a person is missing or has absconded (32 & 33)
- Leave processes should include formal procedures that support carer involvement and participation (25)

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