

# The role of the ACT Administrative Tribunal (ACAT) under the *Mental Health Act 2015*

Issues covered include:

- what is the ACAT
- the roles of ACAT have under the *Mental Health Act 2015* (the Act).

## What is the ACT Administrative Appeals Tribunal?

The ACAT is an independent body that listens to information from all parties including the person referred to the tribunal, clinicians, carers and other support people regarding mental health matters. It then makes decisions about whether an order is required. People placed on an order can appeal to the ACAT for a review of their order.

## Administrative Issues

When ACAT receives an application for an order, they are required to:

- provide a copy of the application to the Public Advocate and the Children and Young People's Director-General within 24 hours of receiving it
- give at least three days' written notice of the hearing to the person (see note below) and other people involved in the person's life, support and treatment (see s. 188 of the Act for a comprehensive list)
- hold a hearing to decide whether an order should be made.

**Note:** If the applicant has reasonable grounds to believe the notification process is likely to substantially increase the risk to the person's health or safety, or the risk of serious harm to others, they must inform ACAT in writing.

If the president of ACAT agrees with the applicant, then the notification process can be limited or waived. ACAT will give a copy of the applicant's written statement to the Public Advocate.

## ACAT Hearings

ACAT generally comprises three members, including the President (a senior lawyer who has overall responsibility for the hearing), a qualified medical professional (generally a retired psychiatrist) and a community representative (someone appointed by ACAT based on their mental health experience).

Depending on the type of order, ACAT may constitute the President only (s. 185) or the President and a medical professional (s. 186).

Hearings must be held in private, except if the person is an adult and the person requests that the hearing to be held in public or ACAT orders the hearing to be held in public.

The hearing may be held at ACAT Office, or at one of the inpatient facilities. The person for whom the order is being sought is encouraged to attend the hearing.

Hearings are generally informal. The treating team will outline the reasons why they are applying for the order. Members of the Tribunal and the Public Advocate have an opportunity to ask questions of the treating team. The person for whom the order is being sought can provide information and explain their views. Members of ACAT may also ask the person questions about their views and wishes. The person may be represented by a lawyer (either their own, or the duty lawyer from Legal Aid ACT). However, the person is not required to have legal representation.

## People who may appear and give evidence

A statutory office holder or anyone involved in the person's care may appear and give evidence at a hearing (see s. 188 of the Act for a comprehensive list).

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### ACAT considerations for Mental Health Order hearing

ACAT must make the decision in accordance with the [principles of the Act](#).

In doing this, ACAT considers:

- the treatment plan accompanying the application
- whether the person has decision-making capacity to consent or refuse to consent to the proposed treatment, care or support
- the views and wishes of the person (including through the person's Advance Agreement and/or Advance Consent Direction)
- the views of the person's carer(s) and other people attending the hearing
- the views of the people consulted by ACAT (under ss. 54 and 97)
- that any restrictions placed on the person are the minimum necessary for the safe and effective care of the person
- any alternative treatment, care or support available.

**Alert:** ACAT must consider additional criteria when making a FMHO.

### ACAT Decisions

ACAT will usually decide to grant/not grant the Order on the day of the hearing. This will initially be communicated verbally and will be followed up with a written order.

The Order will state one or more of the following:

- The person is to be admitted to an approved mental health or community care facility
- The person is to receive treatment, care or support
- The person is to undertake a counselling, training therapeutic or rehabilitation program

- Limits are to be placed on the communication between the person and other people.

In addition, the Order will state that the person is to comply with the treatment determination.

A copy of the Order must be given to the person, the treating team and all people involved in the person's care.

### Treatment Plan and Location Determination

The Order made by ACAT only authorises the overall direction of the treatment, care and support to be provided but will include a condition that the person comply with the treatment plan determined by the Chief Psychiatrist or Care Coordinator.

ACAT is prohibited from ordering a particular treatment (such as that a particular medication to be given), as this is a clinical decision of the Chief Psychiatrist or Care Coordinator (or delegate). Therefore, a Mental Health Order (MHO) or Forensic Mental Health Order (FMHO) will always include a condition that the person comply with the treatment plan and location determination of the Chief Psychiatrist or Care Coordinator.