

Affected people and the affected person's register under the Mental Health Act 2015

Issues covered include:

- Affected people
- The affected person's register.

Affected people

An affected person, in relation to a forensic patient under the Mental Health Act, is a person who has suffered harm because of a crime committed, or alleged to have been committed, who is within ACAT's mental health jurisdiction through a criminal justice pathway. An affected person includes:

- a primary affected person, i.e. someone who has been harmed during or because of the commissioning of an offence or who has witnessed the event, or
- a family member of the primary affected person who has suffered harm because of the harm to the primary affected person, and who is dependent financially or psychologically on the primary affected person (s. 128).

The harm caused may include physical or mental injury or emotional suffering (including grief), pregnancy, economic loss, or substantial impairment of a person's legal rights.

The dependent person may include a:

- child of someone who is legally dependent on the primary affected person, i.e. the primary affected person is the parent or legally appointed guardian under the *Guardianship and Management of Property Act 1991*, or
- legally incompetent person, i.e. an adult who is subject to an enduring power of attorney under the *Powers of Attorney Act 2006* or a guardianship order under the *Guardianship and Management of Property Act 1991*.

Affected person's register

Under the *ACT Civil and Administrative Tribunal Act 2008*, ACAT is responsible for keeping a register of persons affected by an offence committed or alleged to have been committed by a forensic patient.

The Affected Person's Register is used by ACAT to provide information to the registered affected person and the Victims of Crime Commissioner about the forensic patient, including:

- that an application for a FMHO has been made
- that a FMHO is in force
- that the forensic patient has absconded or failed to return from leave from an approved mental health or community care facility
- the forensic patient is transferred to or from another jurisdiction
- the forensic patient is released from a mental health or community care facility.

ACAT may disclose any other information about the forensic patient to the registered affected person and the Victims of Crime Commissioner if they consider it necessary for the registered affected person's safety or wellbeing. Information must not be disclosed about the identify of child, unless the offence caused harm or threatened to cause harm or was a domestic violence offence, and ACAT believes that the registered affected person or a family member of the person, may come into contact with the child.

Affected people and the affected persons register**Registration of affected persons**

ACAT must advise affected persons of the register and their right to be included on the register and seek their consent to be on the register.

If the affected person is a child under 15 years old, the person with parental responsibility for the child may be provided with relevant information about the forensic patient.

Any person who wants to be registered on the affected person's register, and their representatives, must sign an undertaking not to publish any information they receive about the forensic patient (s. 131(2)).

Removing an affected person from the register

A person's details may be removed from the register if:

- ACAT considers that it is no longer necessary for the person's wellbeing and safety to be a registered affected person, or
- The person breaches the undertaking not to publish information disclosed to them.

ACAT must give both the person and the Victims of Crime Commissioner written notice of their intent to remove the person from the register prior to doing so (s. 133(3)).

The person and the Victims of Crime Commissioner has 28 days to tell the Director-General of ACAT why the person should not be removed from the register.