

1: Overview of the Mental Health Act

What is the Act?

The *Mental Health Act 2015* (the Act) is the law that says in what circumstances you can be assessed, treated, cared for and supported, if you have a mental illness or mental disorder. It is commonly used when you are unable to make your own decisions about treatment or if you do not want, but still need treatment, care, and support.

The Act came into effect on 1 March 2016 and replaced the *Mental Health (Treatment and Care) Act 1994*. The Act is reviewed regularly to ensure it remains up to date.

The Act only applies in the Australian Capital Territory (ACT) however some sections apply to moving between states and territories. Each state and territory will have its own Act.

What is treatment, care, and support?

‘Treatment, care and support’ describes the type of services provided by health professionals to promote your recovery. These services aim to reduce the impact of your mental illness or mental disorder and may be provided in the community or in a hospital setting. Services can include:

- therapy and rehabilitation programs
- medication
- psychological supports
- counselling

What does the Act do?

The Act protects and promotes your human rights; your rights are important and can be found in the ‘Objects’ and ‘Principles’ sections of the Act.

Under these principles you have:

- the same rights and responsibilities as other members of the community and should be supported to exercise those rights and responsibilities without discrimination the right to be assumed to have decision-making capacity unless there is evidence that you do not and after help has been given
- the right to decide on your own recovery journey
- the right to the best treatment, care and support available in the least restrictive way
- the right to consent to, refuse or stop treatment, care, and support whenever you have capacity to do so
- the right to have your wishes considered in decisions about treatment, care or support; the right to receive services that are sensitive and responsive to your age, gender, culture, language, religion, sexuality, experience of trauma and other life experiences, and that promote your dignity and independence
- the right to have family, carers and/or Nominated Persons involved
- the right to receive timely information in a way that is easy to understand, and
- the right to communicate in the easiest way possible.

The Act also sets out the roles and responsibilities of the people that are helping you and they must:

- give you best possible treatment, care, and support, with a high level of skill
- assume you have decision-making capacity, unless proven otherwise, and respect your decisions about treatment, care, and support, and

- help you to make your own decisions about your recovery
- recognise the experience and knowledge that your family, friends and carers have about your mental illness or mental disorder
- acknowledge the impact that a mental illness or mental disorder has on family, friends, and carers, and
- involve your family, friends, and carers in decisions.

What is a mental illness and what is a mental disorder?

The Act defines a **mental illness** and a **mental disorder** separately.

A **mental illness** is a condition that seriously impairs (either temporarily or permanently) functioning in one of more areas of your thought, mood, volition, perception, orientation, or memory. This may include delusions (false beliefs), hallucinations (seeing or hearing things that are not there), disorder of thought, disturbance of mood or irrational behaviour. The most common mental illnesses dealt with under the Act are major mood disorders (for example severe depression and bipolar disorder) and psychotic disorders (for example, schizophrenia).

A **mental disorder** is a condition that interferes with your perceptual interpretation, comprehension, reasoning, learning, judgement, memory, motivation, or emotion. Common causes of mental disorder include dementia (for example, Alzheimer's disease), intellectual disability, acquired brain injury or other degenerative neurological conditions. A mental disorder can significantly affect your ability to function in day-to-day life.

Who does the Act cover?

The Act covers a wide range of people and groups who play an important role in the Act.

The information below provides a brief overview of each, and more information about these and the Act can be found at the end of this brochure.

You (a person living with a mental illness or mental disorder)

The Act is designed to increase involvement in your own treatment, care, and support, and to help you make your own decisions.

People closely connected to you

This can include partners, parents, friends, family, extended family, kinship connections and carers. The Act allows these people to be kept up to date with what is happening to you, and to be involved in decisions that are being made about you. For example, if you are under 18 years of age your parents (or other people with parental responsibility) can receive information and be involved in making decisions under the Act.

Your carers

A carer provides personal care, support, or assistance to you. People can be carers if they are a partner, parent, child, relative, guardian or if they live with you however such a person is not automatically a carer because of the position they hold in relation to you. Similarly, if someone helps you as part of their job (even if they are a volunteer with an organisation or have appropriate training) they are not called a carer.

Carers ACT has advocates who can support you to:

- communicate effectively with a service, agency, or government department
- link you into the support and information you need
- have your voice heard and acknowledged. Develop your self advocacy skills
- write correspondence, make phone calls, attending meetings and tribunals.

These services are available to any carer in the ACT by phoning (02) 6296 9900.

Your treating team

Your treating team is the group of people who work together to provide you with treatment, care, and support. This includes doctors, nurses, allied health professionals, as well as professional carers who may work in your home.

The Chief Psychiatrist

The Chief Psychiatrist is appointed by the Minister for Mental Health. Under the Act, the Chief Psychiatrist delegates some of their responsibilities in relation to people with a mental illness to other psychiatrists employed in the ACT to ensure matters under the Act relating to your treatment, care, and support are dealt with efficiently.

The Care Coordinator

The Care Coordinator is responsible for coordinating the treatment, care, and support for a person with a mental disorder who is on a Community Care Order. The Care Coordinator delegates some of their responsibilities to appropriate people to ensure matters under the Act relating to your treatment, care, and support are dealt with efficiently.

ACT Civil and Administrative Tribunal (ACAT)

ACAT is an independent legal body that has the authority to make decisions about whether you need to receive treatment, care, and support under the Act. The Tribunal usually comprises a lawyer, psychiatrist, and a community member and their role is to make decisions about your mental health treatment, care, and support, including making Mental Health Orders.

You have the right to be represented by a lawyer and their role is to help you understand what is happening, to make

formal arguments and represent your interests. Legal Aid can provide legal advice to people admitted to Canberra's mental health facilities, at the ACAT and in the Legal Aid offices.

Advocacy Services

These are community and non-government groups who provide support to people including people with mental illness, mental disorder, or disability. They can help to make sure your opinions are heard and communicated. Advocacy services in the ACT include the ACT Disability, Aged and Carer Advocacy Service (ADACAS) and Advocacy for Inclusion.

Public Advocate

The role of the Public Advocate is to protect and promote the rights of vulnerable people in the ACT. Under the Act, the Public Advocate must receive certain information and be involved in certain decisions that are being made on the treatment, care, and support of people living with a mental illness or mental disorder. If you are unable to make decisions for yourself and there is no one else suitable to represent you, the Public Advocate may act as your guardian.

Guardians

Guardians are given the power to make decisions on your behalf if you are unable to make decisions for yourself.

A Guardian's decision is not enforceable if you disagree with their decision. Guardians must be involved in decisions made by the ACAT, the Chief Psychiatrist or the Care Coordinator (or their delegates).

Official Visitors

Official Visitors are authorised to visit places that provide treatment, care, and support, including mental health facilities. One of their roles is to visit facilities and make sure that your rights are being upheld. Official Visitors can receive feedback from people who are in the care of the ACT Government, including

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people receiving involuntary treatment under the Mental Health Act.

Like the Public Advocate, you can request to see the Official Visitor.

Approved mental health or community care facility

These are health facilities in the ACT approved by the Minister for Mental Health to provide assessment, treatment, care, and support for people with a mental illness or mental disorder. These facilities are responsible for ensuring your rights are upheld when you are admitted to them and/or treated in them.

Mental Health Officers

Mental Health Officers are nurses or allied health professionals appointed by the Chief Psychiatrist to undertake specific functions on behalf of the Chief Psychiatrist under the Act. If a Mental Health officer believes you have a mental illness or mental disorder and determines that you need immediate assessment or treatment, they are authorised to take you to an approved mental health facility. Mental Health officers are required to carry an ID card, which they must show on request.

Ambulance Officers

Authorised ambulance officers can also take you to an approved mental health facility if they believe you have a mental illness or mental disorder and have tried or are likely to cause serious harm to yourself or others, or if there is an immediate risk of harm or a need for immediate examination but you do not agree to be examined.

Police Officers

Police officers can also take you to an approved mental health facility if they believe you have a mental illness or mental disorder and have tried or are likely to cause serious harm to yourself or others, or if there is an immediate risk of harm or a need for immediate examination but you do not agree to be examined. This can include action to protect the public.

Where can I find more information?

For more information about the *Mental Health Act 2015* select from the hyperlinks listed below.

- [Objects and Principles of the Act](#)
- [Decision-making capacity](#)
- [Appointing a Nominated Person](#)
- [Making an Advance Consent Direction](#)
- [Making an Advance Agreement](#)
- [Assessment Order](#)
- [Apprehension and Detention](#)
- [Overview of Mental Health Orders](#)
- [Community Care Order](#)
- [Forensic Community Care Order](#)
- [Psychiatric Treatment Order](#)
- [Forensic Psychiatric Treatment Order](#)
- [Restriction Order](#)
- [Electroconvulsive Therapy](#)
- [Psychiatric Surgery](#)
- [Important terms](#)
- [Where to get help about the *Mental Health Act 2015*.](#)