

Rights of people experiencing mental illness or mental disorder, carers and nominated people

For an explanation of all technical definitions and terms used in this module, please refer to the *Definitions of terms used in the Mental Health Act 2015*

<https://health.act.gov.au/services-and-programsmental-health/mental-health-act-2015#definitions>

Background

The Mental Health Act 2015 (the Act) seeks to comply with the Human Rights Act (2004) and the United Nations Convention on the Rights of People with Disabilities.

Human Rights considerations

The Australian Capital Territory (ACT) is a human rights compliant jurisdiction. Sections of the *Human Rights Act (2004)* relevant to the implementation of the *Mental Health Act 2015* include:

- **protection from torture and cruel, inhuman or degrading treating** – that no-one may be subject to medical or scientific experimentation or treatment without his or her free consent (s. 10(2))
- **privacy and reputation** – to have one's personal information protected (s. 12)
- **right to liberty and security of person** – the right not to be deprived of one's liberty (s. 18(2)), and
- **human rights may be limited** – limits may be set by laws that can be demonstrably justified in a free and democratic society (s. 28(1)).

United National Convention on the Rights of People with Disabilities (CRPD)

The CRPD does not comprehensively define 'disability' but makes it clear that it includes mental and psychosocial disabilities.¹

In line with the CRPD, the Act requires consideration of a person's views via supported decision-making, and respecting the person's will and preferences through Advance Agreements and Advance Consent Directions.

Informing people of their rights

Information to be given to people

The information to be provided to a person admitted to a facility/service is set out in section 15 and includes:

- the person's right to obtain a second opinion from an appropriate mental health professional, and
- the person's right to obtain legal advice, and
- If the person has decision-making capacity, the right to:
 - nominate someone else to be their nominated person, and
 - enter into an Advance Agreement, and
 - make an Advance Consent Direction, and
- the right to access or request other information about their rights and support/advocacy services (see *information to be given to people*, below).

The treating team must ensure that the above information is provided to the person, as soon as practicable, in a way that they are most likely to understand. This may include the use of an interpreter, picture board or trusted support person.

¹ See Article 1 of the CRPD.

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If the person appears to continue to have difficulty understanding the information provided, the treating team must ensure that the Public Advocate is informed as soon as possible.

The person in charge of a facility/service must also ensure that reasonable steps are taken to provide a copy of the above information to the following people if they are involved in the person's care:

- the Nominated Person
- the Guardian
- the Attorney
- the parent(s) or each person with parental responsibility if the person is a child
- the legal representative, and
- the Carer.

Information to be made available

The person in charge of the facility/service must ensure that current copies of the following items are readily accessible to all people admitted to, or receiving treatment:

- *The Mental Health Act 2015*
- *The Guardianship and Management of Property Act 1991* and any other relevant legislation
- Any publications, including statements printed in different languages, explaining the legislation (e.g. brochures developed by Canberra Health Services, the Office of the Chief Psychiatrist or community organisations)
- A list of names, addresses telephone numbers and functions of agencies or organisations which may be relevant.

Alert: The owner of a private psychiatric facility commits an offence if they do not provide the above information. The penalty is \$3,200 for an individual or \$16,200 for a facility (see s. 133 of the *Legislation Act 2001*).

Rights of people during Emergency Detention and under Mental Health Orders

The treating team (on behalf of the person in charge, Chief Psychiatrist or Care Coordinator) must ensure the rights of people receiving involuntary assessment, treatment, care or support for mental illness or mental disorder under the Act are respected and promoted. These rights include, but are not limited to:

- advising the person that they are applying for an order to provide assessment, treatment, care or support and, before the ACT Civil and Administrative Tribunal (ACAT) holds a hearing, seeking the person's views about the application to ACAT for the Order
- explaining the nature and effect, including side effects, of the treatment, care or support to be provided
 - advising the person that, if they have decision-making capacity, they have the right to:
 - nominate someone else to be their Nominated Person
 - enter into an Advance Agreement
 - make an Advance Consent Direction, and
- apply to the ACAT for a review of their Order or emergency detention.

Communication

The treating team and the person in charge of the facility/service will ensure that all people admitted to, or receiving treatment at the facility, are given reasonable opportunities to communicate with persons of their choice by:

- facilitating access to means that are most appropriate for them. This can include teletypewriter services, communication boards, communication books, sign language, interpreter or translation services or independent advocacy services.

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- providing facilities for preparing written communications and for enclosing those communications in sealed envelopes, i.e. a place to write a letter, paper, pens, pencils and an envelope forwarding communication, without it being opened and without delay, to the addressee (with the exception of limitations placed on communication under the Act).

The person in charge of the facility/service will ensure that all persons admitted to, or receiving treatment, are given access to the Public Advocate and their lawyer or other legal representative at all times. The treating team and person in charge of the facility/service must also provide all reasonable assistance to the Public Advocate or the person's legal representative to ensure that they have access to the person they seek to visit.

A person who has been detained under the emergency detention provisions must also be given the opportunity to notify a family member or friend about their detention (s. 89(6)).

Alert: The person in charge commits an offence if they do not ensure that the person has reasonable access to the Public Advocate and their lawyer, or fails to provide reasonable access to these people when they seek to visit the person. The maximum penalty is \$8,000 for an individual or \$40,500 for a facility (see s. 133 of the *Legislation Act 2001*).

Carers and Families

With the person's consent, mental health services must be provided in a way that involves close relatives, close friends and carers in treatment, care or support. This includes:

- acknowledging the impact of mental disorder/illness on carers and families
- recognising the experience and expertise of carers and families and acknowledges the impact of the person's mental illness/disorder on them

- promoting inclusive practice in treatment, care or support to encourage families and carers in responding to a person's illness/disorder.

It is good clinical practice to involve carers and family in treatment, care or support. Carers and immediate family members generally spend a lot more time with the person than clinicians' and frequently have valuable information and insights which can assist diagnosis, treatment, care and support.

Specific times when people or services are required to consult with and or advise carers about a person's treatment, care or support. These include, but are not limited to:

- the person in charge is required to provide the information (*information to be provided and information to be available*, above) when a person is admitted to an facility/service
- ACAT is required to invite carers to make a submission or attend hearings
- the Chief Psychiatrist/Care Coordinator (or delegate), is required to:
 - consult with carers prior to deciding on treatment, care or support
 - give notice to the carer, seek information from them and advise them that they may make a submission or attend the ACAT hearing and
 - advise the carer of a plan to transfer the person interstate.
 - the RO without affecting the CCO.