



Canberra Health Services

Procedure

Care of Persons subject to a Conditional Release Order (CRO)

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Purpose

To outline the involvement of mental health services staff when the ACT Civil and Administrative Tribunal (ACAT) releases a person from detention on a Conditional Release Order (CRO) under section 180(4) of the *Mental Health Act 2015* (MH Act), and the responsibilities for ongoing provision of treatment, care, or support.

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Alerts

CHS Network for this procedure include inpatient facilities that are a declared Approved Mental Health Facility (AMHF). See the approvals found on the ACT Legislation Register for approval stipulations.

Dhulwa is also a declared Secure Mental Health Facility (SMHF) under the *Mental Health (Secure Facilities) Act 2016*.

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Scope

This document applies to all Canberra Health Services (CHS) staff, in particular Mental Health, Justice Health and Alcohol and Drug Services (MHJHADS) staff that provide treatment, care, or support to people who are subject to a CRO.

Under the *Crimes Act 1900*, when a person has been found either unfit to plea, or not guilty because of mental impairment, the ACT Court may order the person be detained in custody for immediate review by ACAT in accordance with section 180 of the MH Act.

Section 180 of the MH Act requires ACAT to review the detention and consider the release of the person. ACAT can order the person's release from detention under a CRO, which may be subject to conditions the ACAT considers appropriate, including the requirement to comply with a stated Mental Health Order (MHO) or Forensic Mental Health Order (FMHO) (s180 (4)) of the MH Act).

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Section 1 – Roles and responsibilities

1.1 ACAT

ACAT has the sole responsibility for granting a CRO, following the review of a person's detention and consideration of release. As the decision-making body, ACAT is responsible for the management and monitoring of the CRO conditions.

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1.2 MHJHADS

MHJHADS is a provider of public mental health services. The provision of mental health care by a treating team within MHJHADS is evidence based best practice to support the person in their recovery journey.

The mental health treatment, care or support provided to a person subject to a CRO is the same as the treatment, care or support provided to any other person involved in the service.

1.3 Person subject to the CRO

A person subject to a CRO is responsible for compliance and adherence with the conditions of their CRO. The obligation to comply with the conditions are on the individual person.

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Section 2 – ACAT review

Section 180(2) of the MH Act requires ACAT to review the detention and consider the release of the person, as soon as practicable, and not later than 7 days from when ACAT receives the order from the ACT Court. This review may take the form of a hearing.

In reviewing the detention and consideration of the release, ACAT is to have regard for:

- Detention in custody is to be regarded as a last resort (s180(3)(a) MH Act)
- The clinical aspects as outlined in s180(3)(b) and(c) in the MH Act,
- A statement of the registered affected person (if there is one) - s180(3)(d)(i) MH Act,
- The views of the Victims of Crime Commissioner - s180(3)(d)(ii) MH Act, and
- The nominated term by the ACT Court - s180(3)(e) MH Act.

If the ACAT does not grant a CRO to release the person, they may (s180(5) of the MH Act):

- Make a mental health order (including additional orders) in relation to the person, or
- Vary or revoke any of mental health orders in force in relation to the person.

If ACAT does not release the person from detention, ACAT must tell the person, the Chief Psychiatrist and the officials outlined in s180(6) of the MH Act. ACAT must review the person's detention and consider release at least monthly for the duration the person remains in custody.

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Section 3 – Initial request for information from ACAT

ACAT may contact MHJHADS to request clinical information about the person for the purpose of their review and consideration of the person's release. ACAT may:

- Request a report from MHJHADS to address the points in s180(3) (b-c) of the MH Act (the person's consent to share personal health information with ACAT is required),
- Issue a legal order under s41 of the ACAT Act (legal order) for the clinical records, or
- Make an assessment order under s37 of the MH Act.

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ACAT's request for information will be directed to the appropriate treating team managing the person who are responsible for authoring the report.

3.1 Consent

In accordance with the provisions of the *Health Records (Privacy and Access) Act 1997*, consent to share personal health information with ACAT is required.

In response to a request from ACAT, MHJHADS are to obtain the consent to share personal health information with ACAT. Consent is to be fully informed requiring a discussion with the person including an explanation of the purpose and extent of the ACAT request and what personal health information will be shared with ACAT.

The Consent to Release and/or Share Personal Information Form on the CHS Clinical Forms Register is to be used to record the consent. This form and a record of the discussion regarding consent is to be documented in the person's clinical record.

MHJHADS are to inform ACAT if the person does not consent to sharing their personal health information for the purposes of a report to ACAT.

If MHJHADS have not been contacted by ACAT prior to the hearing and consent to share personal health information has not been sought or obtained, MHJHADS are unable to provide clinical information.

3.1.1 Report to ACAT

To prepare the report to ACAT, the following should occur:

- Review the persons clinical records to provide clinical information specific to the criteria outlined in section 180(3)(b) and (c) of the MH Act, and/ or
- Organise an appointment with the person, in conjunction with a review of their clinical records to provide clinical information specific to the criteria outlined in section 180(3)(b) and (c) of the MH Act to prepare the report.

3.2 Legal Order

If ACAT seek personal health information/clinical information via a legal order, consent from the person is not required.

The legal order to produce the clinical records to ACAT is to be sent to the CHS Chief Executive Office for actioning.

3.3 Assessment order

MHJHADS are to adhere to the contents of the Assessment Order, see CHS ACT Civil and Administrative Tribunal (ACAT) Ordered Mental Health Assessment procedure.

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Section 4 – Initial report to ACAT

The initial report to ACAT is to be concise and provide the following clinical information:

- Nature and extent of the person’s mental illness or disorder
- Current mental health status of the person
- Effect the mental illness or disorder will have on the person’s behaviour in the future
- Ongoing needs for treatment and care of the person
- Opinion on current risk, health and safety of person and others
- If clinically required, an application for a mental health order be made
- If not clinically required, clearly state that the person does not meet the criteria for an order.

The report should not address or contain an opinion about the person’s release from custody.

4.1. Inpatient admission while on a CRO

Before providing information to ACAT regarding a suitable location (inpatient unit) for the provision of treatment, care or support, serious consideration to making an application for a mental health order must be made. Important considerations being:

- ACAT does not have the power to detain or order a person be detained in a mental health facility pursuant to the CRO alone.
- A person subject to a CRO without a mental health order is a voluntary patient.
- A person subject to a CRO without a mental health order, cannot be admitted to or remain admitted in Dhulwa, as there is no order authorising the person’s involuntary detention or treatment.
- If admitted to Gawanggal on a CRO without a mental health order and requires involuntary treatment, as Gawanggal is not an AMHF for people subject to an Emergency Detention (ED) order they must be transferred to another AMHF using s80.

4.2 Documentation

The initial report to ACAT and application for a mental health order (if made) must be loaded into the person’s clinical record and the Tribunal Liaison Officer (TLO) is notified via the in basket.

The completed initial report, and application for a mental health order (if made), will be submitted to ACAT, by the TLO via email at ACATmentalhealth@act.gov.au

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Section 5 – CRO granted

If the CRO is granted, ACAT will provide a copy of the order to the person, the treating team and the TLO. The CRO is to be loaded into the person’s clinical record by the TLO and the treating team is to ensure all people involved in the treatment, care or support are aware of the order.

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The CRO conditions the person is required to comply with may include the following:

- Location the person is to reside, any imposed curfews or limits on contacts
- Acceptance and compliance with assessment, treatment, rehabilitation, care, and support
- Substance use and monitoring
- General behaviours
- Comply with a stated mental health order (if one is made).

5.1 Obligations of mental health services

MHJHADS are obligated to provide treatment, care or support for the person's mental illness or disorder for a person engaged with our service.

5.2 Obligation of person subject to the CRO

The individual person subject to the CRO is obligated to adhere to and comply with the condition/s of their CRO. These condition/s have been imposed on them, as individual people, as a condition of their release from custody.

MHJHADS should not prevent or actively interfere with the ability of the person to meet their obligations or adhere to the conditions of their CRO.

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Section 6 – Contravention of CRO conditions

If mental health services become aware, or forms the clinical opinion, that a person has contravened a condition of their CRO the treating team must notify ACAT.

6.1 Contravention of a CRO condition

In accordance with section 181(2) of the MH Act, the notification to ACAT is to occur, in writing, as soon as practicable after becoming aware of the contravention. This should be done via email at ACATmentalhealth@act.gov.au. Notification of the contravention to ACAT must also to be placed in the person's clinical record.

6.2 ACAT response to contravention

Within 72 hours of the written notification of the CRO condition contravention, ACAT must review each CRO condition/s. This can be done without a hearing.

The review of the CRO condition/s may result in ACAT amending or revoking a CRO condition or imposing further conditions. Additionally, ACAT may order that the person be detained in custody until ACAT orders otherwise.

If a CRO condition is amended, revoked or further conditions imposed, the updated order will be provided to the person and MHJHADS by ACAT.

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Note: A person cannot be apprehended and taken to an AMHF solely because they contravened their CRO. Only if the criteria on section 80 of the MH Act is met, can they be apprehended and taken to an AMHF.

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Section 7 – Contravention of a mental health order

A person subject to a mental health order is required to comply with all the conditions of that order, and the Treatment Plan and Location Determination (TPLD) completed by the treating team. Non-compliance with any of these conditions is a contravention of the mental health order.

7.1 Contravention of a stated mental /forensic health order as a condition of the CRO

If the person does not comply with their stated mental health order, as a condition of their CRO they are in contravention.

The process of informing people they are in contravention of their mental health order, outlined in ss77 & 124 of the MH Act, has changed. The process now allows:

- Mental Health Officers (MHO) or Consultant Psychiatrist (delegate of the Chief Psychiatrist) to authorise a contravention, and
- all reasonable steps must be taken to contact the person to remedy the contravention, replacing the oral and written warnings.

7.1.1 Reasonable steps

The treating team must take reasonable steps to tell the person that a failure to comply with the mental health order may result in the person being taken to an AMHF for treatment, care or support. This must occur within 7 days of the contravention (ss77, 124 MH Act). If the contravention continues, the person can be taken to an AMHF to ensure compliance with the mental health order.

The following reasonable steps must be taken, where possible, before determining a contravention:

- telling the person that failure to comply with the mental health order may result in being apprehended and taken to an AMHF for treatment,
- provide options for the person to remedy the contravention by accepting assessment or treatment in a place other than an AMHF (excluding person on a FMHO),
- if noncompliance continues, the person may be taken to an AMHF to ensure treatment under the mental health order.

In addition to the above reasonable steps, before the treating team can determine the person is non contactable, the following must occur:

- call the person
- attend a location where the person is known to attend, such as their home



- send written correspondence, via letter or SMS to the person's known address or contact phone number
- advise a person identified by the consumer (carer, nominated person, other person the consumer has included in their treatment plan in relation to their preference for contravention).

Only after the above steps have been taken can the contravention be authorised.

7.1.2 Contravention form

The Contravention & Authorisation to Require a Person to be Detained form (available in the clinical records system) must be completed, including the dates of contact attempts and all reasonable steps taken and signed by the Delegate or MHO. It is good practice, that prior to an MHO signing the contravention form, a discussion occurs with the treating psychiatrist, or another Delegate.

The TLO is to be notified via their in-basket of the signed contravention form, and the TLO will distribute to the ACAT.

The person can be apprehended by a police officer, authorised ambulance paramedic, MHO or doctor and taken to an AMHF. If assistance is required by another agency, a copy of the signed contravention authorisation is to be provided.

If the person has complied with the requirements of their order, by accepting treatment at a place other than an AMHF the relevant officer is satisfied is appropriate (s77(5) MH Act) the contravention order is to be withdrawn. The other agencies notified of the contravention order are to be immediately told the contravention has been withdrawn.

If the contravention is withdrawn, the TLO must be notified via the in basket.

7.2 Documentation

The treating team is to document in the person's clinical record and on the Contravention & Authorisation to Require a Person to be Detained form all reasonable steps taken.

The clinical record is to include the:

- reasonable steps to inform the person of the contravention,
- if the person is not contactable, the reasonable steps made to contact the person,
- the reasons requiring the detention and
- authorisation of the apprehension.

6.3.1 Detention notification to ACAT and Public Advocate

If the person is required to be detained at an AMHF to ensure compliance with the mental health order, the ACAT and Public Advocate are to be notified, of the person's name, the reason for detention and which AMHF the person is detained in (s77(6) *Mental Health Act 2015*) within:

- 12 hours for person subject to a FPTO, or

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- 24 hours for person subject to a PTO.

This notification is done through a TPLD which documents the person has been detained at an AMHF to ensure compliance with their mental health order. The TLO will be notified of the updated TLPD form, via their in-basket and will distribute to the ACAT and Public Advocate.

7.3 Persons absconding from an inpatient setting

A person subject to mental health order with a TPLD which states they are to be detained at an AMHF who absconds from the facility is considered to have contravened their mental health order (ss78 or 125 MH Act).

The person in charge of the facility should follow the CHS Missing Patient Procedure.

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Section 8 – Ongoing reporting

Section 182(1) of the MH Act outlines ACAT must review a CRO condition at least every 6 months.

Forensic Mental Health Service (FMHS) will provide a report to ACAT prior to the review of the CRO. Forensic Psychiatrist or Forensic Trainee Psychiatrist will review the patient on 3-6 monthly basis, as required for the ACAT report. The purpose of the report is to provide information on the treatment, care or support and the person's engagement and compliance. If necessary for the purposes of the ACAT report, FMHS may organise a joint review with Community Recovery Service (CRS).

TLO are to be notified via the in basket of the completed 6 monthly CRO Report. TLO will provide the report to ACAT at least 3 days prior to the hearing date.

8.1 Attendance at the CRO review hearing

Any person under CRO should be assigned a clinical manager by the CRS, the clinical manager is expected to attend ACAT hearings. Any inability to attend must be discussed with their Team Manager and alternative representation should be organised.

The Forensic Psychiatrist who authored the CRO report should also attend the ACAT hearing, if required. If attendance is delegated to the Forensic Psychiatry Registrar, the report must have been authored/signed/ endorsed by the Forensic Psychiatrist.

For all inpatient consumers attendance at ACAT hearings by medical staff is mandatory.

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Evaluation

Outcome

- Requests for clinical information from ACAT is contained in the person's clinical record.
- All reports to ACAT are contained in the person's clinical record.
- Application for a mental health order or forensic mental health order, if made in conjunction with the CRO, is contained in the person's clinical record.

Measure

- Review of Clinical documentation associated with the CRO through regular audits.

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Related Policies, Procedures, Guidelines and Legislation

Policies

- Informed Consent – Clinical
- Clinical Records Management

Procedure

- Clinical Records Management
- ACT Civil and Administrative (ACAT) Ordered Mental Health Assessment
- Care of Persons subject to Psychiatric Treatment Orders (PTOs) with or without a Restriction Order (RO)
- Care of Persons subject to Forensic Mental Health Order (FMHO)
- Adult Community Mental Health Services (ACMHS) Community Recovery Services (CRS)

Legislation

- *Mental Health Act 2015*
- *Mental Health (Secure Facilities) Act 2016*
- *ACT Civil and Administrative Tribunal Act 2008*
- *Health Records (Privacy and Access) Act 1997*
- *Human Rights Act 2004*
- *Crimes Act 1900*
- *ACT Civil and Administrative Tribunal Act 2008*
- *Carers Recognition Act 2021*

Other

- Australian Charter of Healthcare Rights

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Definition of terms

ACT Civil and Administrative Tribunal (ACAT) is a tribunal established under the *ACT Civil and Administrative Tribunal Act 2008* and is an independent decision-making body.

Conditional Release Order means an order under the *Mental Health Act 2015* granted by ACAT to release a person from custody subject to conditions (if any).

Detained in custody means held in court ordered custody or detained in a correctional centre as declared by the *Corrections Management Act 2007*.

Mental Health Officer (MHO) is a person appointed by the Chief Psychiatrist under s201 of the *Mental Health Act 2015* to undertake functions under the Act.

Nominated term means the sentence the Court would have considered appropriate if the person had been found guilty of the offence.

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Search terms

s.180, Mental Health Act, conditional release, forensic, mental health, approved mental health facility, adult community mental health teams, conditional release order.

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Policy Team ONLY to complete the following:

<i>Date Amended</i>	<i>Section Amended</i>	<i>Divisional Approval</i>	<i>Final Approval</i>
03/01/2023	New Document	Katie McKenzie ED MHJHADS	CHS Policy Committee

This document supersedes the following:

<i>Document Number</i>	<i>Document Name</i>