



Functional Governance Better Practice Guide

Persons suffering from mental illness or mental disorder (ACT Policing)

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This document is a functional governance instrument as defined under s.4 of the [AFP Commissioner's Order on Governance \(CO1\)](#).

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(COMMONWEALTH)

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1. Definitions

Approved health facility	means a health facility approved by the Minister under paragraph 261(1) of the Mental Health Act 2015 - presently the Adult Mental Health Unit (AMHU) at the Canberra Hospital.
Gazetted mental health facility	means a mental health facility approved by the Minister under paragraph 261(1); of the Mental Health Act 2015 and that has been gazetted in the Crimes Act 1900 .
Care coordinator	means a public servant into whose care a person subject to a community care order is placed, under paragraph 204(1); of the Mental Health Act 2015 .
Chief psychiatrist	means the Chief Psychiatrist appointed under section 196 of the Mental Health Act 2015 . The role of the Chief Psychiatrist clearly distinguishes the clinical duties of the position from the administrative office of the Director General of ACT Mental Health Services.
Mental disorder	as defined by s.9 of the Mental Health Act 2015 <i>a. means a disturbance or defect, to a substantially disabling degree, of perceptual interpretation, comprehension, reasoning, learning, judgment, memory, motivation or emotion; but</i> <i>b. does not include a condition that is a mental illness.</i>
Mental illness	as defined by s.10 of the Mental Health Act 2015 <i>means a condition that seriously impairs (either temporarily or permanently) the mental functioning of a person in 1 or more areas of thought, mood, volition, perception, orientation or memory, and is characterised by—</i> <i>a. the presence of at least 1 of the following symptoms:</i> <i>(i) delusions;</i> <i>(ii) hallucinations;</i> <i>(iii) serious disorders of streams of thought;</i> <i>(iv) serious disorders of thought form;</i> <i>(v) serious disturbance of mood; or</i> <i>b. sustained or repeated irrational behaviour that may be taken to indicate the presence of at least 1 of the symptoms mentioned in paragraph (a).</i>
Memorandum of Understanding (MOU)	Memorandum of Understanding Between the ACT Ambulance Service, the Australian Federal Police, the Canberra Hospital, Calvary Health Care ACT, Mental Health, Justice Health and Alcohol & Drug Services for People Requiring Mental Health Care

Safe Assessment Pod (SAP)	<p>means a short stay observation suite with ACT Mental Health staff providing a 24 hour ‘in reach service’ in the Emergency Department of the Canberra Hospital.</p> <p>The Clinical and operational governance of the unit falls to the Emergency Department. Following an assessment, a consumer may undergo a period of observation and further assessment, be referred to the community for appropriate follow-up or be admitted to an inpatient unit.</p> <p>Refer to the MOU for escalation protocols.</p>
Secure mental health facility	<p>means a health facility approved by the Minister under paragraph 261(1) of the Mental Health Act 2015 - presently the Forensic Mental Health Unit at Hume (Dhulwa).</p>
Referring officer	<p>in relation to a person, means</p> <ul style="list-style-type: none"> a. the police officer - <ul style="list-style-type: none"> (i) who arrests the person in connection with an offence; (ii) who is satisfied that there are sufficient grounds on which to charge the person in connection with an offence; or (iii) who charges the person in connection with an offence; b. a member of the staff of the director of public prosecutions who is responsible for the prosecution of an offence against the person; or c. if the person is required to accept supervision by someone else as a condition of bail under the Bail Act 1992 —that other person.
Responsible person	<p>means —</p> <ul style="list-style-type: none"> a. a parent of the child or young person; or b. if no parent of the child or young person has parental responsibility for the child or young person—someone else who has daily care responsibility, or long-term care responsibility, for the child or young person.

2. Privacy and consent

The handling and exchange of personal information is regulated by privacy legislation at the federal, state and territory level. The principal piece of federal legislation regulating privacy in Australia is the [Privacy Act 1988 \(Cth\)](#) which applies to Australian and ACT Government agencies and private sector organisations. The Act contains a set of 11 Information Privacy Principles (IPPs) that apply to government agencies.

Of particular relevance to this Better Practice Guide are IPPs 10 and 11, which impose limits on the manner in which Australian Government agencies use and disclose personal information. IPP 10 provides that a ‘record-keeper’ in an Australian Government agency that has possession or control of personal information shall not use the information for any other purpose unless:

- (a) The individual concerned has consented to use of the information for that other purpose, or

- (b) the record-keeper believes on reasonable grounds that use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person.

- **Note:** If consent for information exchange is not able to be obtained from the consumer then any exchange of information between parties must meet the threshold as described in 2.b. Any written documentation released without consent must be with the written approval of the Mental Health, Justice Health, Alcohol and Drug Service (MHJHADS) Executive Officer.

3. Types of Mental Health Orders

There are two types of orders in the [Mental Health Act 2015](#):

1. Psychiatric Treatment Order (s.58)
2. Community Care Order (s.66)

3.1 Psychiatric Treatment Order

The ACT Civil and Administrative Tribunal (ACAT) may make an involuntary **Psychiatric Treatment Order** (PTO) in respect of a person if-

- (a) *the person has a mental illness; and*
- (b) *either—*
 - (i) *the person does not have decision-making capacity to consent to the treatment, care or support and refuses to receive the treatment; or*
 - (ii) *the person has decision-making capacity to consent to the treatment, care or support, but refuses to consent; and*
- (c) *the ACAT believes on reasonable grounds that, because of the mental illness, the person—*
 - (i) *is doing, or is likely to do, serious harm to themselves or someone else; or*
 - (ii) *is suffering, or is likely to suffer, serious mental or physical deterioration; and*
- (d) *in relation to a person mentioned in paragraph (b) (ii)—the ACAT is satisfied that the harm or deterioration, or likely harm or deterioration, mentioned in paragraph (c) is of such a serious nature that it outweighs the person’s right to refuse to consent; and*
- (e) *the ACAT is satisfied that psychiatric treatment, care or support is likely to—*
 - (i) *reduce the harm or deterioration, or the likelihood of the harm or deterioration, mentioned in paragraph (c); or*
 - (ii) *result in an improvement in the person’s psychiatric condition; and*
- (f) *if an application has been made for a forensic mental health order—the ACAT is satisfied that a psychiatric treatment order should be made instead; and*
- (g) *the ACAT is satisfied that the treatment, care or support to be provided under the psychiatric treatment order cannot be adequately provided in another way that would involve less restriction of the freedom of choice and movement of the person.*

3.2 Community Care Order

The Tribunal may make a **Community Care Order** (CCO) in respect of a person if-

- (a) *the person has a mental disorder; and*
- (b) *either—*
 - (i) *the person does not have decision-making capacity to consent to the treatment, care or support and refuses to receive the treatment, care or support; or*
 - (ii) *the person has decision-making capacity to consent to the treatment, care or support, but refuses to consent; and*
- (c) *the ACAT believes on reasonable grounds that, because of the mental disorder, the person—*
 - (i) *is doing, or is likely to do, serious harm to themselves or someone else; or*
 - (ii) *is suffering, or is likely to suffer, serious mental or physical deterioration; and*
- (d) *in relation to a person mentioned in paragraph (b) (ii)—the ACAT is satisfied that the harm or deterioration, or likely harm or deterioration, mentioned in paragraph (c) is of such a serious nature that it outweighs the person’s right to refuse to consent; and*
- (e) *the ACAT is satisfied that treatment, care or support is likely to reduce the harm or deterioration, or likelihood of harm or deterioration, mentioned in paragraph (c); and*
- (f) *the ACAT is satisfied that, in the circumstances, a psychiatric treatment order should not be made; and*
- (g) *if an application has been made for a forensic mental health order—the ACAT is satisfied that a community care order should be made instead; and*
- (h) *the ACAT is satisfied that the treatment, care or support to be provided under the community care order cannot be adequately provided in another way that would involve less restriction of the freedom of choice and movement of the person.*

3.3 Restriction Order

A '**Restriction Order**' may be made by the ACAT **in addition** to a psychiatric treatment order (s.60) or community care order s.66(2) if the ACAT is satisfied that it is in the interests of the person’s health or safety or public safety to do so. A Restriction Order is similar in essence to Restraining Orders issued by the Court; they contain certain conditions that must not be breached.

A breach of a Restriction Order under this act **does not** require police to detain or apprehend the person named in that order. Police must notify the Crisis Assessment and Treatment Team (CATT) of the alleged breach as soon as possible after its occurrence. Unless the person named in the order requires emergency detention, **there is no provision to further detain the person.** Further inquiry needs be made to determine if a breach of the Restriction Order also breaches the accompanying *Psychiatric Treatment Order* or *Community Care Order*.

3.4 Interstate Treatment Order

For persons subject to a **Treatment Order issued interstate**, inquiries are to be made with Mental Health Triage (CATT) to determine if ACT Mental Health has an agreement with the relevant state or territory regarding apprehension should a breach of the interstate Treatment Order be disclosed.

3.5 Referral to ACAT for a mental health order

A Referring Officer (includes a police officer) may refer a defendant to the Tribunal for a mental health order if the grounds under s.51 of the [Mental Health Act 2015](#) are met.

A referral **shall** be in the form of a statutory declaration that details the reasons as to why the responsible officer holds the belief referred to in s.51 of the [Mental Health Act 2015](#).

If the referring officer believes that the appearance of the alleged offender before the Tribunal is likely to increase the risk to the alleged offender's health or safety; or increase the risk of serious harm to others, the referring officer shall also set out those grounds in the statutory declaration.

4. Contravention of Mental Health Orders

Before a person on a Psychiatric Treatment Order can be placed in breach of that order, they are required to be given an oral warning. If the oral warning is not complied with, the person is required to be issued with a warning in writing. If the person fails to adhere to the order after these two warning steps are undertaken, the Chief Psychiatrist or Care Coordinator may apprehend and detain the person within a mental health facility in accordance with s.77(3) of the [Mental Health Act 2015](#).

Note: Authorisation paper work stating that the necessary cautions have been issued and the person is in breach of a Psychiatric Treatment Order, is to be completed by Mental Health Services. A copy of the authorisation is to be provided to the police officers who are to apprehend the person in contravention of the order.

If the Chief Psychiatrist (or their delegate under the Act) or Care Coordinator authorises the detention of a person under s.77(3) of the [Mental Health Act 2015](#), **a police officer, authorised ambulance paramedic, mental health officer or doctor may apprehend** the person and take that person to an approved health facility or approved community care facility in the ACT and s.263(2) of the [Mental Health Act 2015](#) states a police officer, authorised ambulance paramedic, mental health officer or doctor:

- (a) *may, with necessary and reasonable assistance and minimum force, enter any premises to apprehend, remove or take the person to a place; and apprehend the person and take the person to the facility; and*
- (b) *may use necessary and reasonable assistance to enter premises and apprehend the person.*

5. Detention and release of defendants subject to a mental health assessment order

The Magistrates/Supreme Court can order that a person appearing before the court in answer to a charge (defendant) can be detained and taken to an approved mental health facility (AMHU) under s.309 of the [Crimes Act 1900](#) for the purpose of a mental health assessment. A defendant subject to a s.309 order can subsequently be retained by the facility for care and treatment pursuant to the [Mental Health Act 2015](#).

At the completion of an assessment and any subsequent care and treatment, a defendant detained under s.309 of the [Crimes Act 1900](#) is typically required to be brought back before the Court in response to the original charge that saw them placed before the Court – refer Part 6 of this Guide for conveyance protocols.

A defendant can only be released into police custody from an approved health facility (AMHU) in accordance with the order of the Court because police will then be able to give effect to the Court's order that:

- the defendant be admitted to bail by an authorised officer, for the purpose of the [Bail Act 1992](#), or
- the defendant be taken back before the court as soon as is practicable, or
- the defendant be dealt with by an authorised officer in accordance with the [Bail Act 1992](#).

Prior to being returned to the Court, the mental health facility (AMHU) should notify the ACT Watch House of their intention to return a defendant subject to a s.309 order. This practice ensures the Watch House is informed of the person's release prior to transfer into police custody.

6. Custody of defendants subject to a mental health assessment order

Subject to an order made by the Court pursuant to s.309(1) of the [Crimes Act 1900](#), ACT Corrections will typically transfer of a defendant from the Court to the approved mental health facility (AMHU) however police may also be tasked to do so from time to time.

There will be a requirement for police officers or custodial escorts who convey defendants to an approved mental health facility (AMHU) for examination pursuant to an order of the Magistrates/Supreme Court under s.309(1)(a) of the [Crimes Act 1900](#) to provide a copy of the order to the person in charge of the facility.

Where a doctor at an approved health facility discovers on examination that the defendant does not require involuntary detention at the approved mental health facility, or the defendant has received adequate treatment and care after having been detained at the facility for a period, he/she is to notify ACT Policing Operations of the requirement for police to attend and transport the defendant.

Release of a defendant into police custody where they are required to appear before the Court should not occur outside of the Court' sitting hours to ensure the defendant is not being held in the Watch House longer than is necessary to process their appearance.

Police officers tasked with returning a defendant to the Court will be provided (by the facility) with a copy of the s.309 Court order and a number of other health related documents prior to taking the defendant into custody. These documents are not intended for consumption by police except for a form used to transfer custody and provide advice concerning risk to and welfare of the defendant.

Once placed into the custody of police, the defendant will be conveyed to the Watch House and the Watch House notified of the impending arrival.

7A. Apprehension – Emergency detention by police and paramedics

Section 80(1) [Mental Health Act 2015](#)

A police officer or authorised ambulance paramedic* may apprehend a person **and** take the person to an approved mental health facility if the police officer or paramedic believes on reasonable grounds that—

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- (a) *the person has a mental disorder or mental illness; and*
- (b) *the person has attempted or is likely to attempt—*
 - (i) *suicide; or*
 - (ii) *to inflict serious harm on themselves or another person.*

Note: It is recommended that Police consult with a mental health clinician (either via ACT Police Operations or ACT Mental Health Triage) regarding a consumer's behaviour and suggested course of action before executing an emergency detention under s.80(1) of the [Mental Health Act 2015](#) in order to make a clinically informed decision regarding care and treatment options for a person.

* All ACTAS paramedics are 'authorised ambulance paramedics'.

Note: All persons apprehended under s.80(1) of the [Mental Health Act 2015](#) must be transported to and lodged with the Emergency Department at the Canberra Hospital. Alternative mental health facilities cannot be used notwithstanding a desire on the part of the apprehended person to be lodged elsewhere.

Note: In order to maintain the respect and dignity of a person who has either a mental illness or mental disorder, transportation of the defendant by a caged police vehicle **should be avoided where possible**, unless there is a significant risk of injury to either the person suffering a mental illness or mental disorder, or any other person.

7B. Apprehension – Emergency detention by doctors and mental health officers

Doctors and Mental Health Officers have wider provisions for apprehension than police and paramedics under s.80(2) of the [Mental Health Act 2015](#):

- (2) *A doctor or mental health officer may apprehend a person and take the person to an approved mental health facility if the doctor or mental health officer believes on reasonable grounds that—*
 - (a) *the person has a mental disorder or mental illness; and*
 - (b) *either—*
 - (i) *the person requires immediate treatment, care or support; or*
 - (ii) *the person's condition will deteriorate within 3 days to such an extent that the person would require immediate treatment, care or support; and*
 - (c) *the person has refused to receive that treatment, care or support; and*
 - (d) *detention is necessary for the person's health or safety, social or financial wellbeing, or for the protection of someone else or the public; and*
 - (e) *adequate treatment, care or support cannot be provided in a less restrictive environment.*

The Doctor or Mental Health Officer may apprehend the person and take him or her to an approved health care facility.

8. Statement of Apprehension

A person including a police officer who detains a person pursuant to s.80(1) of the [Mental Health Act 2015](#) is required by s.83 of the Act to complete a *Statement of action taken*:

Section 83 [Mental Health Act 2015](#)

- (1) *A police officer, authorised ambulance paramedic, doctor or mental health officer who takes a person to an approved mental health facility under section 80 must give the person in charge of the facility a written statement containing a description of the action taken under that section, including the following:*
 - (a) *the name and address (if known) of the person taken to the facility;*
 - (b) *the date and time when the person was taken to the facility;*
 - (c) *detailed reasons for taking the action;*
 - (d) *the nature and extent of the force or assistance used to enter any premises, or to apprehend the person and take the person to the facility;*
 - (e) *the nature and extent of any restraint, involuntary seclusion or forcible giving of medication used when apprehending the person or taking the person to the facility;*
 - (f) *anything else that happened when the person was being apprehended and taken to the facility that may have an effect on the person's physical or mental health.*

Examples—par (f)

1. *the person was subject to threats of violence from another person*
2. *a package of white powder fell out of the person's pocket*
3. *the person was in an agitated state and hit their head against the side of the transport vehicle*

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act 2001, s126 and s132).

- (2) *The person in charge of the approved mental health facility must—*
 - (a) *enter the statement in the person's record; and*
 - (b) *keep a register of any restraint, involuntary seclusion or forcible giving of medication included in the statement.*

A form containing the *Statement of action taken* per s.83(1) of the [Mental Health Act 2015](#) is kept at the Canberra Hospital's Emergency Department for completion by police or authorised ambulance paramedics whom apprehend a person per s.80(1) of the [Mental Health Act 2015](#). A carbon copy will be provided to police in order to upload a scanned image into PROMIS.

Note: Advice from the ACT Government Solicitor revokes the long-established practice of mental health clinicians and doctors completing this form on behalf of police who have been tasked with locating, apprehending and transporting a person to the Canberra Hospital for assessment, treatment and care. The provision at s.83(1)(d), (e) and (f) of the [Mental Health Act 2015](#) requires a first-hand account be provided by

the person whom apprehended because the information may influence clinical decisions of health providers in relation to the treatment of the person apprehended.

9. Hand-over – Emergency detention

The MOU and the *ACT Health Model of Care* aspire to limit police involvement in mental health related matters (where criminality is not a factor) and this includes protocols for the timely release of police officers whom apprehend, transport and lodge a person at the Canberra Hospital pursuant to s.80(1) of the [Mental Health Act 2015](#).

9.1 Hand-over – Timeliness benchmark

Persons apprehended by police per s.80(1) of the [Mental Health Act 2015](#) will be transported to the Emergency Department at the Canberra Hospital in order for a medical assessment to be undertaken prior to a mental health assessment.

Where the person does not pose a threat to any person, police will be released as soon as practicable after hand-over to the Emergency Department and completion (if warranted) of a statement per s.83 of the [Mental Health Act 2015](#).

The MOU **aspires to a hand-over benchmark not exceeding 45 minutes**. Mental Health staff accompanying the person during transport should remain with the person until a handover is affected.

After waiting 30 minutes, police may speak to the triage nurse and inquire about the reason for the delay and an expected time of their release. If the release of police is anticipated to exceed the benchmark, attending police may contact the Duty Operations Manager (DOM) in Police Operations and advise them of the delay.

The DOM can contact the Nurse Navigator for the Emergency Department to discuss options to expedite the release of police including the invocation of a **'grey response'**.

If contact with the Nurse Navigator is unable to resolve the retention of police, the DOM may contact the Canberra Hospital Admitting Officer (between 08:00hrs and 00:00hrs), or outside of those hours, a senior registrar for the Emergency Department.

9.2 Hand-over – Initiating a Grey Response

A **'grey response'** is an internally activated response within the Canberra Hospital's Emergency Department to actual or potentially violent, aggressive, abusive or threatening behaviour exhibited by patients or visitors. Typically the invocation of the protocol allows the Emergency Department to draw on resources in other hospital departments to assist in the response.

In a mental health setting, the protocol has been adapted by the Canberra Hospital to permit activation in order to release police officers in a timely manner per the MOU benchmark. When initiated a senior ED doctor, clinical nursing coordinator and mental health clinician will attend the location of the incident to provide additional assistance including the provision of wards men to remain with the apprehended person and thereafter allow police to be released.

In addition to the MOU benchmark, if police have any concerns the person apprehended under s.80(1) of the [Mental Health Act 2015](#) is displaying any of the above behaviours either on route to, or at the hospital, they should contact Emergency Department triage asking for the consideration of a **'grey response'**.

10A. Apprehension – Escapee from a secure mental health facility (Dhulwa)

In addition to the AMHU, the ACT has a secure mental health facility (Dhulwa) to lodge persons convicted of crimes but who are determined to be unfit to be placed in a general prison population due to a mental illness or disorder.

Should a person escape from Dhulwa, the [Mental Health Act 2015](#) provides a power of apprehension at s.144D(4):

- (1) *This section applies if a person taken to be in the custody of the director-general escapes from a secure mental health facility.*
- (2) *The person in charge of the secure mental health facility must immediately tell the police that the person has escaped.*
- (4) *A police officer, authorised ambulance paramedic, mental health officer or doctor may apprehend the person and return the person to the secure mental health facility.*

10B. Statement required - Apprehension of escapee from a secure mental health facility (Dhulwa)

Similar to the statement required by s.83 of the [Mental Health Act 2015](#) when detaining a person under the s.80 Emergency Detention provision, a statement is required to be completed by a police officer if they apprehend an escapee from Dhulwa:

s.144D(5) [Mental Health Act 2015](#):

- (5) *A police officer, authorised ambulance paramedic, mental health officer or doctor who apprehends and returns the person to a secure mental health facility must give the director-general a written statement containing any of the following relevant information:*
 - (a) *the nature and extent of the force or assistance used to enter any premises, or to apprehend the person and take the person to the facility;*
 - (b) *the nature and extent of any restraint, involuntary seclusion or forcible giving of medication used when apprehending the person or taking the person to the facility;*
 - (c) *anything else that happened when the person was being apprehended and taken to the facility that may have an effect on the person's physical or mental health.*

A form has been drafted by ACT Forensic Mental Health and is kept by Dhulwa where it will be provided to police whom apprehend an escapee. Unlike the s.83 *Statement of action taken* form, the completed s.144D(5) form needs to be photocopied at the facility in order for it to be later uploaded as a scanned image to PROMIS.

11A. Power to enter in order to apprehend a person

Additional powers including a power of entry are conferred upon police officers to apprehend a person - s.263 of the [Mental Health Act 2015](#):

(1) This section applies to a person (an authorised person) who is authorised to apprehend, remove, detain or take a person to a place under any of the following provisions:

The 'following provisions' referenced by s.s.(1) include s.80 (Emergency Detention) and s.144D (Escapee from secure mental health facility – Dhulwa) of the [Mental Health Act 2015](#).

Police officers are therefore empowered to enter premises in order to apprehend a person and to call on assistance in order to do so:

(2) The authorised person—

(a) may, with necessary and reasonable assistance and minimum force, enter any premises to apprehend, remove or take the person to a place; and

(b) may use necessary and reasonable assistance to enter premises and apprehend the person; and

(c) must use the minimum amount of force necessary to apprehend the person and remove the person to—

(i) an approved mental health facility; or

(ii) another place where the person may be detained for treatment, care or support.

The provision at s.263(2)(a) of the [Mental Health Act 2015](#) concerns an authorised person (police officer) entering or using assistance of another party to enter a premises with the purpose of the authorised person apprehending. Whereas the provision at s.263(2)(b) of the [Mental Health Act 2015](#) concerns the authorised person (police officer) calling upon assistance of another party to apprehend the person.

Pursuant to s.80(2) of the [Mental Health Act 2015](#), if a doctor or mental health officer forms the opinion the Emergency Detention criteria applies, the doctor or mental health officer may request police assistance in the apprehension of the person under s.263 of the [Mental Health Act 2015](#).

Note: A police officer shall request information from the doctor or mental health officer, which supports the requisite standard of belief and criteria to apprehend a person under this section.

Should a person subject to emergency detention per s.80 of the [Mental Health Act 2015](#) refuse entry to a premises, or if information suggests the person has a propensity for violence, consideration shall be given to utilising the Specialist Response Group and the Police Negotiation Team as well as the CATT.

11B. Power to search and seize items from an apprehended persons

Additional powers including a power of search and seizure are conferred upon police officers upon apprehending a person - s.264 of the [Mental Health Act 2015](#):

(1) This section applies to a person (an authorised person) who is authorised to apprehend, remove, detain or take a person to a place under any of the following provisions:

The 'following provisions' referenced by s.s.(1) include s.80 (Emergency Detention) and s.144D (Escapee from secure mental health facility – Dhulwa) of the [Mental Health Act 2015](#).

Police officers are therefore empowered to search and seize apprehend persons:

(2) *The authorised person—*

- (a) *may carry out a scanning search, frisk search or ordinary search of the person if there are reasonable grounds for believing that the person is carrying anything—*
 - (i) *that would present a danger to the authorised person or another person; or*
 - (ii) *that could be used to assist the person to escape the authorised person’s custody; and*
- (b) *may seize and detain a thing found in a search conducted under paragraph (a).*

The terms *Frisk Search* and *Ordinary Search* are defined in s.264(6) of the [Mental Health Act 2015](#) however it has the same meaning as criminal statutes in the ACT.

The police officer is thereafter obligated to make a record of the search per s.264(3) of the [Mental Health Act 2015](#):

- (3) *The authorised person must make a written record of anything seized under this section.*
- (5) *However, subsection (4) does not apply to a thing if the authorised person believes on reasonable grounds that—*
 - (a) *the only practical use of the thing in relation to the premises where it was seized would be an offence against this Act; or*
 - (b) *possession of the thing would be an offence; or*
 - (c) *possession of the thing would present a serious risk or threat to a person.*

12. Protection against liability

The [Mental Health Act 2015](#) at s.265 contains protections from civil liability for police officers fulfilling functions of the Act:

- (1) *An official is not civilly liable for conduct engaged in honestly and without recklessness—*
 - (a) *in the exercise of a function under this Act; or*
 - (b) *in the reasonable belief that the conduct was in the exercise of a function under this Act.*
- (2) *Any civil liability that would, apart from this section, attach to the official attaches instead to the Territory.*

13. Criminality

Allegations of criminal conduct involving a person with mental illness or mental disorder, shall be investigated in the same manner as any other criminal investigation whether detained or voluntarily remaining in a mental health facility.

The extent of criminal liability due to mental impairment is a matter for the Court to determine. The presumption of criminal liability in this circumstance is provided by s.28(4) of the [Criminal Code 2002](#) and therefore the decision to prosecute should not be influenced by mental impairment.

This guide does not seek to revoke existing protocols for criminal sanctions enacted by police concerning persons with a mental illness or disorder. If grounds for arrest are satisfied per s.212 of the [Crimes Act 1900](#), the person shall be taken to the Watch House where, should they require a mental health assessment, CATT can be contacted to attend but the person shall undergo the charge process irrespective of their mental wellness.

In cases where a fitness to undergo an interview assessment is required, Clinical Forensics, Australian Capital Territory (CFACT) should be requested to attend.

14. Custody

Where a person in police custody is suffering a mental illness or mental disorder and is required to attend an approved health facility for mental health treatment prior to appearing before the Court, the person is deemed to be still in police custody.

The person may be cared for by mental health staff in a mental health facility however there is not a transfer of custody to mental health workers and subsequently police are required to maintain custody of the person until such time as they are discharged from the facility.

In circumstances where police are required to maintain custody of a person admitted to a treating facility, police will consult with the management of that unit to ensure the police presence is as unobtrusive as possible.

15. Notifications

15.1 Children

Where a child is apprehended in accordance with the provisions of the [Mental Health Act 2015](#), a police officer is obliged under s.2521 of the [Crimes Act 1900](#), to promptly take all reasonable steps to tell a responsible person of the child's apprehension.

15.2 Adults

When a person is detained under s.89(6) of the [Mental Health Act 2015](#), the person in charge of a mental health facility where a person is detained under s.81 or s.85 must ensure that the person has adequate opportunity and assistance to notify a relative or friend of their detention.

All efforts should be made to contact a parent or a family member or a friend to inform them of the person's detention if it appears on reasonable grounds not to be detrimental to the person to do so.

Police shall assist clinicians to comply with these provisions should they have apprehended the person or if asked to assist in making these notifications.

16. Firearms and accoutrements – Carriage into facilities

Aligning with Parts 7.9 and 7.10 of [Commissioner's Order 3](#), except in circumstances where police officers are responding to an incident that warrants the retention of accoutrements, they will not wear firearms, batons, chemical agents or conducted energy weapons in a mental health facility.

In circumstances where police officers are attending a mental health facility for routine or non-urgent incident/enquiry, they will secure their firearms, batons, chemical agents and conducted energy weapons in the approved safe provided by the facility pursuant to Part 15.4 of [Commissioner's Order 3](#).

17. References:

17.1 Legislation

[ACT Civil and Administrative Tribunal Act 2008](#)

[Bail Act 1992](#)

[Children and Young People Act 2008](#)

[Crimes Act 1900](#)

[Criminal Code 2002](#)

[Mental Health Act 2015](#)

[Privacy Act 1988 \(Cth\)](#)

17.2 AFP Governance

[Commissioner's Order 3](#)

[Memorandum of Understanding Between the ACT Ambulance Service, the Australian Federal Police, the Canberra Hospital, Calvary Health Care ACT, Mental Health, Justice Health and Alcohol & Drug Services for People Requiring Mental Health Care](#)

[National Guideline on Police Custodial Facilities and People in Custody](#)

17.3 Other sources

[Fourth National Mental Health Plan](#)

Annexure - Frequently Asked Questions

Q. You have taken someone into custody under S.80 and they have assaulted me, should you take them to the Watch house first before taking them to TCH?

A. No, someone taken into custody for an emergency detention must be taken to a registered facility, pursuant to S.80 - If the charge of assault cannot be cleared by a summons then the member should consider arranging with Mental Health to contact Police and advise when the person is to be released so they can be arrested.

Q. If Police and ACTAS attend a job where a person is subject to an Emergency Detention (because they have appear to be suffering a mental illness or disorder and have threatened to kill themselves) and is non-aggressive and compliant who should transport them?

A. Under the least restrictive model the most appropriate form of transport is Mental Health and then ACTAS. The MOU recommends that police are not to be used to apprehend or transport persons where a less restrictive means is available and this includes the person being compliant with the detention. Where no less restrictive means is available (ACTAS or Mental Health not in attendance) and there are no issues in relation to medical supervision then the person can be transported by Police in the least restrictive means possible i.e. in a sedan and not the back of a cage.

Q. Should Police transport a person requesting mental health treatment to TCH?

A. No. Police powers relate to emergency detentions and not voluntary admissions. People wanting to voluntarily admit themselves to a Mental Health Facility should be referred to Mental Health triage if they cannot get themselves to a facility.

Q. You have attended a job with ACT Mental Health to assist them in relation to an emergency detention, the person is uncooperative and aggressive requiring them to be handcuffed, but when you get to hospital Mental Health are not there. What should you do?

A. The powers of Doctors and Mental Health Officers in relation to emergency detention are broader than those of a police officer or paramedic. The reasons and observations for the emergency detention reside with the Mental Health team. Members should contact Police Operations to ascertain when Mental Health will attend and escalate through the DOM accordingly if unable to obtain a satisfactory response.

Q. ACTAS require Police assistance to restrain a person so they can be sedated and placed on an emergency detention. ACTAS ask you to take the person to TCH due to the violence displayed.

A. In no circumstances where a person has been sedated or requires medical supervision should a person be transported to TCH on an emergency detention by Police. When necessary police can travel and assist ACTAS if required. The emergency detention and statement of action taken (sedation) need to be completed by ACTAS.

Q. If you help to physically restrain a person for the purpose of ACTAS sedating a person and they complete the Emergency Detention should you still fill out a UoF report?

A. Regardless of who completes the emergency detention paperwork, if you have used force to restrain someone you should always complete a UoF report.

Q. Whose responsibility is it to complete a s.83(1) Statement of action taken or a s.144D(5) Statement?

A. Regardless of whom called for the apprehension of a person, the obligation to complete the written statement falls to the person whom apprehended the person.