### Involuntary commitment and treatment (ICT) criteria in Australian and New Zealand Mental Health Acts

#### ACT:
- **Mental Health Act 2015** s8, 66, 101
  - **Mental Illness:** The person has a mental illness or mental disorder, and
  - **Harm:** is doing, or is likely to do, serious harm to themselves or someone else or
  - **Need for care:** suffers serious mental or physical deterioration or is in need of treatment, care or support.

#### NSW:
- **Mental Health Act 2007** cl12, 14, 68
  - **Mental Illness:** The person has a mental illness and is suffering from mental illness and, owing to that illness, there are reasonable grounds for believing that care, treatment and control of the person is necessary.

#### NT:
- **Mental Health and Related Services Act 1998** cl1
  - **Mental Illness:** The person has a mental illness and as a result of the mental illness without the treatment the person is likely to:
  - suffer serious mental or physical deterioration;
  - have a mental illness and because of the mental illness, the person requires treatment for serious mental or physical deterioration.

#### QLD:
- **Mental Health Act 2016** s3, 12
  - **Mental Illness:** The person has a mental illness and because of the absence of involuntary treatment, or the absence of continued involuntary treatment, is likely to result in:
  - serious harm to themselves or another person;
  - the person is suffering serious mental or physical deterioration and:
    - the person's health and safety are likely to be at risk unless the person receives treatment.

#### SA:
- **Mental Health Act 2009** s1
  - **Mental Illness:** The person has a mental illness and because of the absence of involuntary treatment, is likely to result in:
  - serious harm to the person or others or
  - the person's health and safety are likely to be at risk unless the person receives treatment.

#### TAS:
- **Mental Health Act 2013** s6, 40
  - **Mental Illness:** The person has a mental illness and because the person has mental illness the person needs immediate treatment to prevent:
  - serious harm to the person or another person;
  - a significant risk to the safety of the person or another;
  - a significant risk of serious harm to the person or another;
  - a significant risk to the health of the person;
  - serious deterioration in the person's mental or physical health and
  - the immediate treatment will be provided to the person in a temporary treatment order or a treatment order and
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#### VIC:
- **Mental Health Act 2014** s5
  - **Mental Illness:** The person has a mental illness and because the person has mental illness, there is:
  - a significant risk to the safety of the person or another;
  - a significant risk of serious harm to the person or another;
  - a significant risk to the health of the person;
  - serious deterioration in the person's mental or physical health

#### WA:
- **Mental Health Act 2014** s5
  - **Mental Illness:** The person has a mental illness for which the person is in need of treatment and
  - is suffering, or is likely to suffer, serious mental or physical deterioration and
  - needs immediate treatment to prevent:
  - serious harm to the person or another;
  - a significant risk to the safety of the person or another;
  - a significant risk of serious harm to the person or another;
  - a significant risk to the health of the person;
  - serious deterioration in the person's mental or physical health

#### NZ:
- **Mental Health Act (Compulsory Assessment and Treatment) Act 1992** s2, Guidelines to the MHA 2012
  - **Mental Illness:** The person has a mental illness; their health. Activities of daily living. The person is suffering serious mental or physical deterioration. Serious harm may result from mental illness. Serious mental or physical deterioration. The person has suffered serious mental or physical deterioration. The person has a mental illness resulting in serious harm to themselves or someone else.

#### No less restrictive alternative
- The treatment, care or support cannot be adequately provided in any other way that would involve less restriction of the freedom of choice and movement.

### Additional criteria
- The above criteria must be satisfied before a mental health order can be made for a person with decision-making capacity (DMC) who refuses treatment, care or support; the harm or deterioration must be so serious that it outweighs the right to refuse. If a person lacks DMC and refuses treatment, care or support, the only criteria that applies is the existence of a mental disorder or illness. Separate criteria apply to forensic psychiatric treatment orders.

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**Disclaimer:** These tables have been developed by the RANZCP as at 30 June 2017 in order to allow key provisions in the Mental Health Acts to be compared. They are intended for reference purposes only and are not intended to be a substitute for legal or clinical advice.

**Comment:** This table displays the criteria that must be apparent before involuntary commitment and treatment can be authorised. This table does not display the processes that must be followed in making and reviewing that authorisation. These processes vary considerably between jurisdictions; the New Zealand MHA, for example, utilises judicial hearings to make compulsory treatment orders (unlike the Australian MHA). In some Acts, the criteria are listed separately; in others, they are combined (in several cases, they are merged with the definition of mental illness). Changes to the MHA have added additional criteria and process elements to ensure that less restrictive alternatives are utilised. All decisions in order involuntary commitment and treatment under the Australian Acts now require, at a minimum: the person to be suffering from mental illness (or a condition with similar manifestations), a nexus between that illness and serious risks to health and/or personal or public safety, the provision of treatment for that illness, and for there to be no less restrictive means of providing that treatment available. The NZ criteria are slightly broader, as they include ‘seriously diminished capacity to take care of oneself’. Increasingly, the MHA also require an assessment of whether the patient has the capacity to make treatment decisions. This requirement is often included as a Principle or Object of the MHA. Sometimes this requirement is part of the criteria for involuntary commitment and treatment – the new Queensland MHA, for example, prohibits compulsory treatment for a person with decision-making capacity who unreasonably refuses treatment.

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