

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

	ACT: Mental Health Act 2015 s58, 66, 101	NSW: Mental Health Act 2007 ss12, 14, 68	NT: Mental Health and Related Services Act 1998 s14	QLD: Mental Health Act 2016 ss3, 12	SA: Mental Health Act 2009 s21	TAS: Mental Health Act 2013 ss6, 40	VIC: Mental Health Act 2014 s5	WA: Mental Health Act 2014 s25	NZ: Mental Health Act (Compulsory Assessment and Treatment) Act 1992 s2; Guidelines to the MHA 2012
Mental illness	The person has a mental illness or mental disorder, and	The person 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:	The person has a mental illness and as a result of the mental illness, without the treatment the person is likely to:	The person has a mental illness; because of the person's illness, the absence of involuntary treatment, or the absence of continued involuntary treatment, is likely to result in:	The person has a mental illness and because of the mental illness, the person requires treatment for	The person has, or appears to have, a mental illness and without treatment, the mental illness will, or is likely to, seriously harm:	The person has a mental illness and because the person has mental illness the person needs immediate treatment to prevent:	The person has a mental illness for which the person is in need of treatment and because of the mental illness, there is:	<i>Mental disorder</i> , in relation to any person, means an abnormal state of mind (whether of a continuous or an intermittent nature), characterised by delusions, or by disorders of mood or perception or volition or cognition, of such a degree that it:
Harm	is doing, or is likely to do, serious harm to himself or someone else or	for the person's own protection from serious harm or the protection of others from serious harm and	cause serious harm to himself or herself or to someone else or	imminent serious harm to the person or others or	the person's own protection from harm (whether physical or mental and including harm involved in the continuation/deterioration of the person's condition) or to protect others from harm and	the safety of the person or others or	serious harm to the person or to another person or	a significant risk to the safety of the person or another, or a significant risk of serious harm to the person or to another or	poses a serious danger to the safety of that person or of others or
Need for care	is suffering, or is likely to suffer, serious mental or physical deterioration and	N/A	suffer serious mental or physical deterioration and	the person suffering serious mental or physical deterioration.	the person has impaired decision making capacity relating to appropriate treatment of the person's mental illness;	the person's health and	serious deterioration in the person's mental or physical health and	a significant risk to the health of the person and	seriously diminishes the capacity of that person to take care of himself or herself or poses a serious danger to their health.
Psychiatric treatment	treatment/care/support is likely to reduce the harm or deterioration (or its likelihood) or result in an improvement in the person's condition and	N/A	the person requires treatment that is available at an approved treatment facility and	N/A	N/A	the treatment will be appropriate and effective in terms of the outcomes referred to in section 6(1) [see additional criteria] and	the immediate treatment will be provided to the person if the person is subject to a temporary treatment order or a treatment order and	treatment in the community cannot reasonably be provided to the person and	N/A
No less restrictive alternative	the treatment, care or support cannot be adequately provided in another way that would involve less restriction of the freedom of choice and movement.	no other care of a less restrictive kind, that is consistent with safe and effective care, is appropriate and reasonably available to the person.	there is no less restrictive means of ensuring that the person receives the treatment and	The main objects of the Act are to be achieved in a way that is the least restrictive of the rights and liberties of a person who has a mental illness.	there is no less restrictive means than an inpatient treatment order (ITO) of ensuring appropriate treatment of the person's illness.	the treatment cannot be adequately given except under a treatment order.	there is no less restrictive means reasonably available to enable the person to receive the immediate treatment.	the person cannot be adequately provided with treatment in a way that would involve less restriction.	Ensure that assessment and treatment occur in the least restrictive manner consistent with safety
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 <i>forensic psychiatric treatment orders</i> .	In considering whether a person is a mentally ill person, the continuing condition of the person, including any likely deterioration in the person's condition, and the likely effect of any such deterioration, are to be taken into account.	the person is not capable of giving informed consent to the treatment or has unreasonably refused to consent to the treatment.	The person does not have capacity to consent to be treated for the illness.	In considering whether there is no less restrictive means than an ITO of ensuring appropriate treatment, consideration must be given, amongst other things, to the prospects of the person receiving all necessary treatment on a voluntary basis or in compliance with a community treatment order.	(i) The person does not have DMC (ii) the treatment will: prevent/remedy mental illness; or manage/alleviate it where possible; or reduce the risks that persons with mental illness may pose to themselves or others; or monitor and evaluate the person's mental state.	N/A	(i) The person does not demonstrate the capacity to make a treatment decision about the provision of the treatment (ii) Decisions regarding ICT must be made with reference to guidelines published by the Chief Psychiatrist.	N/A

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 MHAs). 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). Recent changes to the MHAs have added additional criteria and process elements to ensure that less restrictive alternatives are utilised. All decisions to 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 MHAs 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.

