

Review of Mental Health Orders and Forensic Mental Health Orders under the *Mental Health Act 2015*

The *Mental Health Act 2015* (the Act) is the ACT legislation that applies to the assessment, treatment, care and support of people experiencing a mental illness or mental disorder.

The Act came into effect on 1 March 2016. It was designed to give people in the ACT living with a mental illness, as well as their carers and family members, greater opportunities to contribute to decisions about their treatment, care and support.

The Act also sets out the legal responsibilities of professionals, such as doctors, mental health workers, ambulance and police officers.

The Act was developed in consultation with stakeholders and the public. It seeks to promote a renewed recovery-oriented approach to mental health service delivery and brings the ACT's mental health legislation in line with human rights law including the *United Nations Convention on the Rights of People with a Disability* and the *ACT Human Rights Act 2004*.

Community consultation

The Minister for Mental Health is required to undertake community consultation to review whether mental health orders and forensic mental health orders under the Act are working appropriately and as intended.

The community can also provide general feedback on the operation of the Act, including their views on how it supports doctors and relevant professionals to provide the best treatment, care and support for people.

The public consultation (the review) opens on **Tuesday 23 April 2019**.

Here you'll find:

- information on how to become involved in the public consultation.
- key information to help you better understand the Act and prepare for the review.

Have your say

We're seeking your feedback on mental health orders and forensic mental health orders under the Act, including their effectiveness.

We're also interested in hearing your general feedback on the Act.

The review closes at 5pm on Tuesday 25 June 2019.

How will your input be used?

Your views will be used to inform reports that will be tabled by the Minister for Mental Health to the Legislative Assembly.

To be involved

Complete the [online survey](https://www.surveymonkey.com/r/5GGYMYF) at: <https://www.surveymonkey.com/r/5GGYMYF>

or send your written submission to:

- mhactreview@act.gov.au
or
- Mental Health Act Review
Mental Health Policy
ACT Health
GPO Box 825
Canberra City ACT 2601

Guide for written submissions

Please use the following questions if you're making a written submission:

1. To what extent has the implementation of mental health orders under the Act – Psychiatric Treatment Orders and Community Care Orders – delivered appropriate and effective treatment, care and support for people subject to them?
2. Do you suggest any changes to the parts of the Act that cover mental health orders? If so, what are they? Why do you make these suggestions?
3. Do you suggest any changes to the parts of the Act that cover forensic mental health orders – Forensic Psychiatric Treatment Orders and Forensic Community Care Orders? If so, what are they? Why do you make these suggestions?
4. Do you have any comments on the objectives and principles of the Act? How do you feel the Act supports the best possible treatment, care and support for people with a mental illness or mental disorder in the ACT?
5. Do you have any general comments about the implementation of the Act?
6. How do you feel the Act's implementation has worked to support its objectives and principles? This could reflect your own or other people's experience of the treatment, care or support provided under the provisions of the Act.

Key provisions of the Act for this review

In accordance with the Act, this review will examine the operation of the following provisions:

- Psychiatric Treatment Orders (PTOs) under section 58 of the Act
- Community care orders (CCOs) – section 66
- Forensic Psychiatric treatment orders (FPTOs) – sections 101 and 102, and
- Forensic Community care orders (FCCOs) – section 108.

To support information about how these orders have been operating since the commencement of the Act, we are also seeking feedback on:

- the experience of people undergoing emergency assessment and detention under the Act, and
- the experience of people who have received treatment, care and support under the Act with the use of Nominated Persons, Advance Agreements and Advance Care Directions.

High level information about these provisions is provided below.

For more detailed information refer to the [Plain Language Guide for the Mental Health Act 2015 \(Australian Capital Territory\), February 2016¹](#), and the [Mental Health Act 2015²](#).

Mental Health Orders

People with a mental illness or mental disorder who have decision-making capacity can choose if they receive treatment, care or support and the form that this takes.

In instances where a person does not have decision-making capacity and/or where their mental illness or mental disorder is placing them or the community at significant risk, authorised involuntary measures may be needed to provide the necessary assessment, treatment, care or support for that person.

The ACT Civil and Administrative Tribunal (ACAT) is responsible for making a range of decisions under the Act about a person's mental health treatment, care or support.

This includes responsibility for granting Mental Health Orders, based on the ACAT's decision.

There are a number of Mental Health Orders that ACAT can make under the Act including:

- PTOs (for people who have a mental illness)
- CCOs (for people who have a mental disorder)
- FPTOs, and
- FCCOs.

Psychiatric Treatment Order

ACAT may make a PTO if it finds that:

- the person has a mental illness, **and**
- the person refuses to receive treatment, care or support where they do not have decision-making capacity or where they do not consent to treatment, care or support and do have decision-making capacity, **and**
- the person is doing, or is likely to do, serious harm to themselves or others, or that they are suffering, or likely to suffer, serious mental or physical deterioration, **and**

¹ http://www.health.act.gov.au/sites/default/files/2018-11/Plain%20Language%20Guide_MH%20ACT_0.pdf

² <http://www.legislation.act.gov.au/a/2015-38/20151008-62005/pdf/2015-38.pdf>

- the harm or deterioration is so serious that it outweighs the person's right not to consent, **and**
- psychiatric treatment, care or support are likely to reduce the harm or deterioration (or the likelihood of it) or lead to an improvement in the mental illness that the person is experiencing, **and**
- the treatment, care or support cannot be adequately provided to the person in another way which would involve less restriction on their freedom of choice and movement.

The review is seeking the views of interested persons in the operation of PTOs since the commencement of the Act in March 2016.

Community Care Order

A CCO is a type of Mental Health Order for people who experience a mental disorder. CCOs are applied for by a person with authority to give the treatment, care or support to the person.

ACAT may make a CCO if it finds that:

- the person has a mental disorder, **and**
- the person refuses to receive treatment, care or support and does not have decision-making capacity, or they do not consent to treatment, care or support and do not have decision-making capacity, **and**
- there are reasonable grounds for ACAT to believe that because of the mental disorder, the person is doing, or is likely to do, serious harm to themselves or someone else, or that they are suffering, or likely to suffer, serious mental or physical deterioration, **and**
- the harm or deterioration is so serious that it outweighs the person's right not to consent, **and**
- a PTO should not be made instead, **and**
- the treatment care or support cannot be adequately provided to the person in another way which would involve less restriction on their freedom of choice and movement.

The review is seeking the views of interested persons in the operation of CCOs since the commencement of the Act in March 2016.

Forensic Mental Health Orders

FMHOs are a new feature of the Act. A FMHO may be made by ACAT where a person with a mental illness or mental disorder is involved with the criminal justice system.

ACAT may make:

- a Forensic Psychiatric Treatment Order (FPTO) for a person with a mental illness, **or**
- a Forensic Community Care Order (FCCO) for a person with a mental disorder.

FMHOs may be used to:

- identify and provide for the care, treatment and support of people subject to criminal proceedings who are living with a mental illness or mental disorder,

- promote the least intrusive treatment and care of those people,
- ensure the safety of members of the community from the risk of serious harm, **and**
- provide a process to allow important information about the person to be shared under appropriate controls with people who have been harmed by the person's conduct.

For more information about FMHOs see the *Plain Language Guide for the Mental Health Act 2015* (Australian Capital Territory), February 2016.

The review is seeking the views of interested persons in the operation of FPTOs and FCCOs since the commencement of the Act in March 2016.

Emergency apprehension, assessment and detention

A key principle of the Australian healthcare system is that a person has the right to choose if, when and how they wish to receive treatment for any medical condition they may have. This applies equally to people with a mental illness.

Where ever possible, a person should retain the right to make informed decisions about their own lives, including their own health care. Involuntary treatment should only be used as a last resort.

The Act states that a person who is believed to be at risk of harm to themselves or others due to a mental illness or mental disorder may be apprehended by an appropriate authority as described in the Act. If reasonable grounds exist, the person can be detained at an approved mental health facility for assessment.

Once detained at an approved mental health facility, an initial examination by a doctor must occur within four hours of either (i) arriving at the facility (for persons detained under section 81 (1)); or (ii) being detained at the facility (for persons detained under section 81 (2)).

The doctor who conducts the initial assessment may then authorise involuntary detention and treatment, care and support at a mental health facility for a period of no more than three days. This can only occur after the doctor has conducted an initial examination and determined that certain conditions are applicable. A second doctor must also examine the person and agree with the first decision.

During the three-day period of emergency detention, if a Consultant Psychiatrist (as a delegate of the Chief Psychiatrist) believes on reasonable grounds that all the conditions still apply then an application may be made to the ACAT for an extension of the period of detention for a maximum of a further 11 days.

This review seeks views from interested persons on the operation of emergency apprehension, assessment and detention under the Act since its commencement in March 2016.

Please note: Under section 85 (3) of the Act, the maximum authorised further period of emergency detention increased from seven days to 11 days. This was intended to ensure a more comprehensive assessment of a person before any application to ACAT for a Mental Health Order and to allow more

time for that person to become less acutely unwell, and therefore potentially reduce the need for further involuntary treatment under the Act.

The increase of the authorised further period of emergency detention was examined in an earlier review of the Act in 2018. People who wish to comment on this subject are welcome to do so as part of this public consultation.

The review seeks views from interested persons on the operation of emergency apprehension, assessment and detention under the Act since its commencement in March 2016.

Use of Nominated Persons, Advance Agreements and Advance Consent Directions

The review is seeking the views of interested persons in the operation of provisions for Nominated Persons, Advance Agreements and Advance Consent directions since the commencement of the Act in March 2016. In particular, the review would like to hear from anyone who made use of any of these provisions, or who wanted to but was unable to for any reason.

Nominated persons (NPs)

Under the Act, a person with a mental disorder or mental illness, who has decision-making capacity, may, in writing nominate someone else to be the person's NP.

The NPs role is to help a person living with a mental illness or mental disorder, by making sure their interests are respected if they require treatment, care or support for their condition.

The NP can receive information and be involved in (and consulted about) decisions in relation to a person's treatment, care or support.

For more information, refer to [Plain Language Guide for the Mental Health Act 2015 \(Australian Capital Territory\), February 2016³](#), and the Act.

Advance Agreements (AAs)

AAs are written documents, completed when the person has decision making capacity, stating a person's preferences for future mental health treatment, care or support. It is used when a person's ability to participate in decisions about their treatment and support is significantly impaired.

AAs includes:

- the person's expressed preferences for treatment,
- the person's preferences, such as practical arrangements for care for a close relative usually cared for by the person, when they are in need of treatment, care or support, **and**
- contact details about important people such as family, carers, guardians, legal representatives or a nominated person.

³ http://www.health.act.gov.au/sites/default/files/2018-11/Plain%20Language%20Guide_MH%20ACT_0.pdf

AAs need to be written and signed by the person, a representative of their ‘treating team’, and their nominated person (if they have one). It can also be signed by someone providing practical help to the person.

Advance Consent Directions (ACDs)

ACDs contain major decisions about treatment that a person consents to receiving, should their mental illness or mental disorder progress to a point where they don’t have decision-making capacity.

An ACD sets out information including the:

- treatment, care or support the person is willing to receive,
- medications or procedures the person is willing, and not willing, to receive, **and**
- people who may, and may not, be given information about the person’s treatment, care or support.

Accessibility

If you have difficulty reading a standard printed document and would like an alternative format, please phone 13 22 81.



If English is not your first language and you need the Translating and Interpreting Service (TIS), please call 13 14 50.

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