



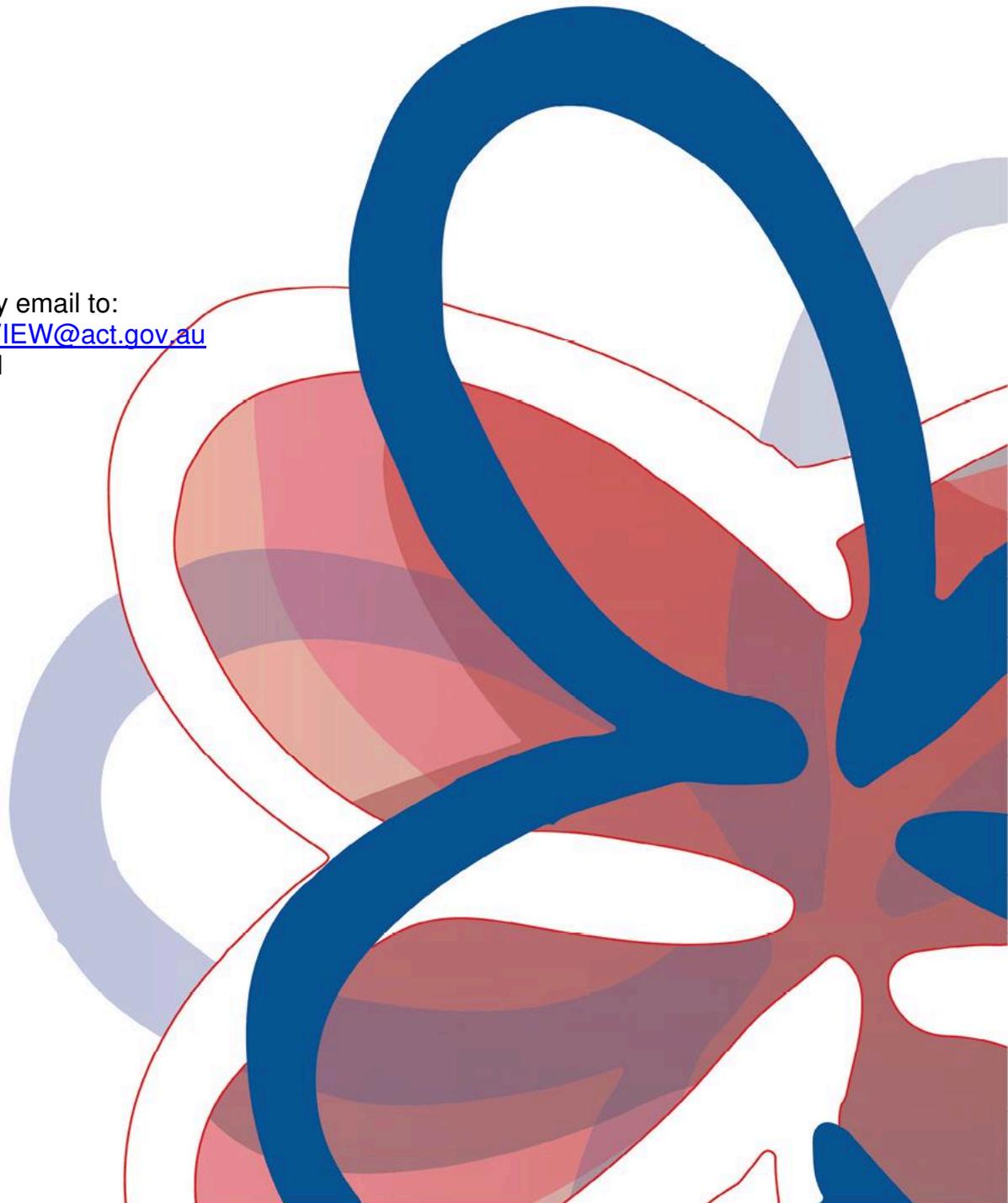
ACT
Mental Health
Consumer Network

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Submission:

**ACT Health Review of the *Mental Health (Secure Facilities) Act 2016*
(the Act)**

Submitted by email to:
MHACTREVIEW@act.gov.au
14 May 2021



Submission:

This submission has been prepared by the ACT Mental Health Consumer Network in response to the invitation from ACT Health to the review of the Mental Health (Secure Facilities) Act (the Act). Within this submission all acts referred to are under ACT Legislation.

The ACT Mental Health Consumer Network is a consumer-led peak organisation representing the interests of mental health consumers in the ACT in policy and decision-making forums. The Network is committed to social justice and the inclusion of people with experience of mental illness. Run by consumers for consumers, our aim is to advocate for services and supports for mental health consumers which better enable them to live fuller, healthier and more valued lives in the community.

The Network advertised and hosted a consumer e-consultation that was facilitated by the ACT Health Directorate in relation to the Review of the *Mental Health (Secure Facilities) Act 2016* (the Act). The feedback of this e-consultation is attached as (Attachment A). A second forum was convened for the same participants of the first consultation for two reasons including receiving the questions two days ahead of the consultation requiring that participants read both the *Mental Health (Secure Facilities) Act 2016* the Act and the *Human Rights Act 2004* in relation to the questions. This did not provide adequate time for participants to review the Acts against the questions.

Unforeseen technical difficulties affected the sound quality during the e-consultation, resulting in one participant exiting the consultation. This Submission forms the additional feedback to Attachment 1, based on the second forum. This Submission does not replace the Network's consumer feedback provided initially at the ACT Health Directorate facilitated forum on 22 April 2021 within Attachment 1.

General comments

The Network welcomes this opportunity to contribute to the review of the ACT's *Mental Health (Secure Facilities) Act 2016* (the Act).

During the e-consultation facilitated by ACT Health, consumers were asked five questions in relation to the ACT's *Mental Health (Secure Facilities) Act 2016* (the Act). The same questions were used for consultation in the Networks forum. Feedback to these questions is included below in relation to the Network's forum and consumers initial feedback provided to ACT Health on 22 April 2021 is included at Attachment A.

ACT Health Consultation Questions

1. Do you think *the Act* provides a clear statement of powers, rights and responsibilities?
 - a. For consumers
 - b. For Staff

Consumers recommend that the Act incorporates clear human rights-based rights. This includes access to outdoor areas for a minimum of 3 hours per day and up to 12 hours a day, the ability to readily access clinicians, i.e., Psychologists, and be provided with a nutritious diet, all of which support a recovery-based journey.

Reference to the *Mental Health Act 2015* (ACT) should be referred to and links included within the ACT's *Mental Health (Secure Facilities) Act 2016* (the Act) due to overlap, particularly in relation to areas regarding restraint and for people under Orders.

The Act should be amended to clearly outline that a 'Nominated Person' is referred to as an 'Accredited Person' within the Act. Rights-based instruments under the *Mental Health Act 2015* (ACT) should be cross referenced in a more obvious way. This includes Nominated Person, Advance Agreement and Advance Consent Direction included in the Act and referenced with links to the *Mental Health Act 2015* (ACT). Noting, that this Review is not a review of practice and procedure at Dhulwa, intake should include seeking confirmation if a person has My Rights My Decisions in place.

Aboriginal and Torres Strait Islander consumers need to be protected under the Act in relation to culture and safety. There is no reference within the Act pertaining to Aboriginal and Torres Strait Islander adult consumers.

2. Do you think the Act ensures Dhulwa provides a safe therapeutic place that is beneficial to consumer recovery and safety?

Concern was raised that while the Director General delegation within the Act includes reference to the *Mental Health Act 2015 (ACT)*, Part 2, Section 9 below, the Act overall needs to be more tightly linked to the *Mental Health Act 2015 (ACT)*:

(2) A SMHF direction must be consistent with –

- a) this Act and the Mental Health Act 2015 (the Act)
- b) if the direction applies to a health practitioner – the registration standards for the health practitioner.

Inclusion of direct links to relevant sections within the ACT's *Mental Health Act 2015* (the Act) are recommended.

The Act does not mention recovery in any instance and is used more as a basis of taking rights away from a consumer rather than incorporating recovery-based practice and mention of rights of the consumer.

The Act references safety, security and good order and conditions set in place to manage risks – such as personal safety. However, the Act does not reference wellbeing and recovery. The focus is on law and order, as a correctional facility rather than a therapeutic facility.

3. Do you think the Act is consistent with the Human Rights Act and adequately balances the need for safety and security against restrictive practices?

Mental Health safety is not referenced within the Act, for example strip searches and the use of restrictive practice. It is recommended that the Act is adjusted to outline access to therapeutic supports following strip search and use of restrictive practice.

The Act does not appear to apply adequate balances in relation to access to therapy and therapeutic mental health treatment. Treatment and Care is referenced for the consumer but not Mental Health Treatment or Mental Health Care. Specific reference is required, similar to Part 4, Division 4.4 that outlines 'Treatment – patient has ingested or concealed something'.

The Human Rights Act 2004 includes reference to Cultural and other rights of Aboriginal and Torres Strait Islander peoples and other minorities. Consumers recommend the Act be expanded to include a similar section consistent with The Human Rights Act 2004.

The Act requires a treatment section for Aboriginal and Torres Strait Islander people however consumers recommend that this is undertaken following engagement with the ACT Aboriginal and Torres Strait Islander community to seek their opinion. The only reference to Aboriginal and Torres Strait Islander people within the Act are related to children or young persons, expansion is required to include adults.

4. Do you think the Act includes restrictive practices that are necessary and proportionate to safeguard risks to consumers and staff?

The Act requires a clear outline of the stages of escalation that lead to restrictive practice. This is regardless of what may be included in a separate procedural document. While the Act includes Authorised Use of Force, the Act does not include a definition of what constitutes force.

Under the Authorised Use of Force, The Act aligns better with corrections management legislation than it does with models of care of any kind.

Currently, the Act defines force as anything that is not grievous bodily harm or death, and the resulting conclusion that anything up to grievous bodily harm or death is acceptable is concerning. The Application of Force within the Act includes:

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(d) uses force, as far as practicable, in a way that reduces the risk of causing death or grievous bodily harm.

The Act does not outline a de-escalation process. This needs to be included in the Act to ensure compliance with the Human Rights Act 2004 and will protect consumers and staff. Further, reference to the protection of Aboriginal and Torres Strait Islander consumers needs to be included in the Act due to the high rates of Deaths in Custody of Aboriginal and Torres Strait Islander people.

5. Do you think the Act provides adequate checks and balances for the use of restrictive practices?

The use of mechanical or physical restraint resulting in serious harm or death is a national sentinel event. The fact that this Act sanctions the use of force as long as it doesn't trigger sentinel event protocols is not considered ethical or suitable for a mental health facility, or any other health facility.

The Act does not include checks and balances for consumers with a disability. Expansion to protect the rights of consumers with a disability needs to be included in the Act.

Amendment is suggested for the text within Section 63, Medical examination after use of force. The current text includes:

The director-general must ensure that a doctor examines a patient injured by the use of force under this division as soon as practicable and that appropriate health care is available to the patient.

The condition 'as soon as practicable' should be included in the text as follows:

'The director-general must ensure that a doctor examines a patient injured by the use of force under this division as soon as practicable and that appropriate health care is available to the patient. As soon as practicable is defined as that deemed by a reasonable person, such as a Commissioner from the Human Rights Commission.'

General checks and balances, not solely related to the use of practice alone, are required. The checks and balances are heavily weighted on the side of the staff and protect staff. However, the checks and balances that support consumers feeling protected are not clear within the Act. A co-signed check list, and a copy provided to the consumer, endorses checks and balances that are weighted evenly for consumers and staff.

Additional Questions related to the review, included in the Template for Submissions

The following questions are included in ACT Health's document 'Template for written submissions':

- How are consumers informed of their rights and supported to enforce their rights specified under the Act?
- What information and education do staff receive in relation to the obligations under the Act?
- Are policies and procedures consistent with the Act?
- Are there adequate oversight provisions in the Act for the monitoring of restrictive practices?

At the time of the two consultation forums the Network had not been provided policies and procedures related to the Act, this limited responding to the above questions.

The Network was subsequently provided copies of some of the related policy and procedure documents in a separate consultation process on 6 May 2021. These were received from a different area within ACT Health and the Network was advised that these documents have been reviewed and are close to, or already, endorsed final versions.

The documents include the:

- Dhulwa Mental Health Unit Searching Policy
- Dhulwa Mental Health Unit Searching Procedure
- Security Services – Use of Force Policy
- Security Services – Use of Force Procedure

While the Network is being given the opportunity for consumers to provide feedback for minor amendments to these documents, consultation requires 4-6 weeks' notice and time does not allow this to occur prior to the 14 May closing date for submissions to the review of the ACT's *Mental Health (Secure Facilities) Act 2016* (the Act). This timing is problematic in relation to some of the questions outlined in the template provided by ACT Health for submissions to the review.

Conclusion and Recommendations:

The following Recommendations are based on the feedback outlined above:

Recommendation 1: Ensure the Act incorporates clear human rights based on the Human Rights Act (ACT). This includes access to outdoor areas for a minimum of 3 hours and up to 12 hours per day, the ability to readily access clinicians, i.e., Psychologists and be provided with a nutritious diet, all of which supports a recovery-based journey.

Recommendation 2: Reference to the ACT's *Mental Health Act 2015* (ACT) (the Act) should be referred to and links included within the *Mental Health (Secure Facilities) Act 2016* (the Act), particularly in relation to reference of restraint and for people under Orders.

Recommendation 3: The Act should be amended to clearly outline that a 'Nominated Person' is referred to as an Accredited person within the Act. Nominated person, Advance Agreement and Advance Consent Direction should be included in the Act and cross reference the rights-based instruments under the ACT's *Mental Health Act 2015* (the Act) in a more obvious way.

Recommendation 4: Feedback to Canberra Health Services.

While consumers note that this Review is not a review of practice and procedure at Dhulwa, intake should include seeking confirmation if a person has My Rights My Decisions in place.

Recommendation 5: The Act requires a section for Aboriginal and Torres Strait Islander people

Consumers recommend that the Act requires a section, or separate Act, for Aboriginal and Torres Strait Islander people. This should be based on engagement with the ACT Aboriginal and Torres Strait Islander community of the ACT to seek their opinion. The only reference to Aboriginal and Torres Strait Islander people within the Act is related to children or young persons, expansion is required to include adults.

Recommendation 6: The Act requires direct links to the ACT's *Mental Health Act 2015* (the Act) to support recovery-based practice.

Inclusion of a focus on consumer wellbeing and recovery-based practice is required.

Recommendation 7: Therapeutic supports following strip search and use of restraint.

It is recommended that the Act is adjusted to include checks and balances for therapeutic supports following strip search and use of restrictive practice.

Recommendation 8: The terms Mental Health Treatment or Mental Health Care should be included within the Act.

Specific sections are required to include Mental Health Treatment or Mental Health Care in addition to Part 4, Division 4.4 Treatment – patient has ingested or concealed something. Treatment is not specified in relation to mental health treatment or care.

Recommendation 9: The Act requires a clear outline of the stages of escalation.

A clearly documented stage of escalation that leads to restrictive practice is required. This is regardless of what may be included in a separate procedural document.

Recommendation 10: A definition of what constitutes force when use of force is enacted is required.

While the Act includes ‘Authorised Use of Force’, the Act does not include a definition of what constitutes force.

Recommendation 11: A de-escalation process is required in relation to restraint and use of force.

This needs to be included in the Act, as well as any procedure document, to ensure compliance with the *Human Rights Act 2004* (ACT) for the protection of consumers and staff.

Recommendation 12: Checks and balance for consumers with a disability is required.

Expansion to protect the rights of consumers with a disability needs to be included in the Act.

Recommendation 13: 'Section 63, Medical examination after use of force' requires amendment.

A measure of what is reasonable in relation to 'as soon as practicable' is required. The reference to medical examination 'as soon as practicable' should be amended to the following:

The director-general must ensure that a doctor examines a patient injured by the use of force under this division as soon as practicable and that appropriate health care is available to the patient. As soon as practicable is defined as that deemed by a reasonable person, such as a Commissioner from the Human Rights Commission.

The above should replace the current 'Section 63, Medical examination after use of force':

The director-general must ensure that a doctor examines a patient injured by the use of force under this division as soon as practicable and that appropriate health care is available to the patient.

Attachment 1: 2021-05 Minutes of the ACT MHCN e-consultation forum with ACT Health Directorate