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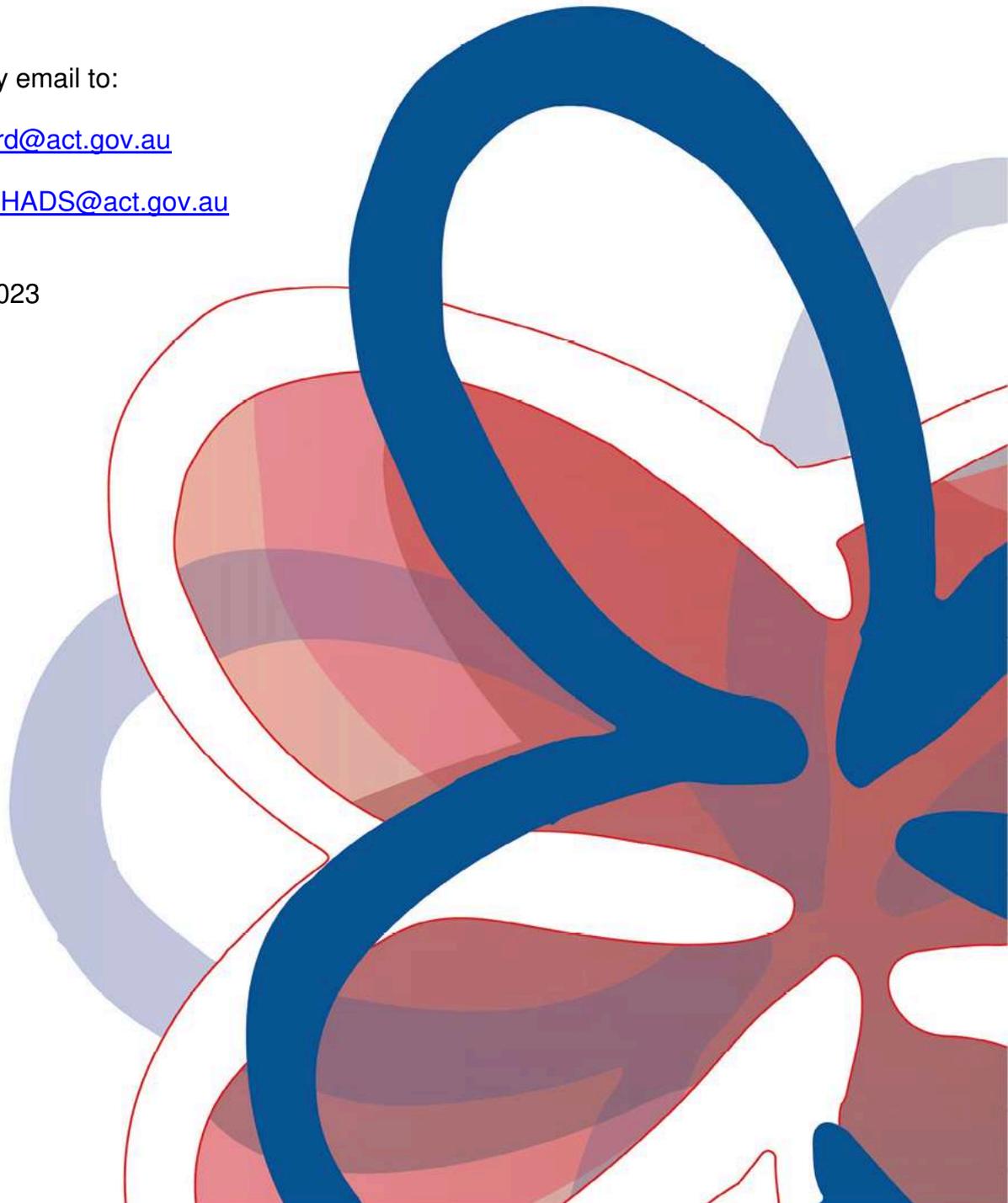
**Canberra Health Services Operational Procedure
- Emergency Detention in an Approved Mental
Health Facility and a Person's Rights under the
*Mental Health Act 2015 (ACT) (Adults and
Children)***

Submitted by email to:

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Submission: Canberra Health Services Operational Procedure - Emergency Detention in an Approved Mental Health Facility and a Person's Rights under the *Mental Health Act 2015* (ACT) (Adults and Children)

The ACT Mental Health Consumer Network (the 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.

A consumer online discussion group was held, and additional feedback was sought via email in relation to the abovenamed Procedure. Written and verbal feedback was received from several consumers. This submission incorporates both the written and verbal feedback received.

Acknowledgement of Country

We wish to acknowledge the traditional owners and custodians of the land upon which we sit. We pay our respects to their Elders past, present and emerging, and extend this respect to other Indigenous Australians who may be reading this submission. We recognise the ongoing contributions of all Indigenous peoples to ACT society and Australia more broadly.

Acknowledgement of people with lived experience

We also acknowledge people with lived and living experience of mental illness as consumers and their important lived experience expertise and ongoing contributions to the mental health sector."

General comments

The Network welcomes this opportunity to contribute to the Procedure.

Consumers do not endorse seclusion

Consumers have clearly stated that their provision of comments and recommendations regarding this Procedure in no way endorse or legitimise the use of seclusion in approved mental health facilities. Consumers referenced research around the trauma caused by seclusion and its limited efficacy as a therapeutic technique to keep people safe.

Consumers draw your attention to Recommendation 54 in the *Final Report of the Royal Commission into Victoria’s Mental Health System*¹, which identifies the goal of erasing seclusion and restraint in mental health and wellbeing service delivery within the next 10 years, and the *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with a Disability Research Report into Restrictive Practices: A pathway to elimination* recommendation that restrictive practices should end.²

While consumers’ first recommendation is to eliminate seclusion as an intervention, they have elected to provide recommendations to this Procedure recognising that it is currently included in the *Mental Health Act 2015* (ACT) (the Act). In addition, they acknowledge that the elimination of seclusion practices would require changes to the Act which is a necessary but longer-term project outside the scope of this review process.

Nominated Person, Advance Consent Direction and Advance Agreement

The wording and provisions for decision-making in the Act should be included in the Procedure where appropriate. The Act provides mental health consumers with the ability to complete forms to put in place the following supports for when they become unwell:

- Advance Agreement;
- Advance Consent Direction; and
- Nominated Person.

It is important that these instruments are noted correctly in the Procedure in all relevant places. The Procedure should be clear in all relevant places that the decisions a consumer has made in their Advance Agreement, Advance Agreement and/or Nominated Person forms constitute consent for periods when they have reduced decision-making capacity. These are important instruments which support treating teams to treat a person when they have reduced decision-making capacity.

¹ Royal Commission into Victoria’s Mental Health System: Final Report, Recommendations, Plain language Version (https://finalreport.rcvmhs.vic.gov.au/wp-content/uploads/2021/02/RCVMHS_FinalReport_PlainLanguage_Recommendations.pdf)

² Spivakovsky. C et al, “Restrictive Practices: A pathway to elimination”, Royal Commission into Violence, Abuse Neglect and Exploitation of People with a Disability, 2023 (<https://disability.royalcommission.gov.au/publications/restrictive-practices-pathway-elimination>)

A consumer's Nominated Person is a trusted person they have identified to support their decision-making should they have reduced capacity or need assistance regarding their mental health treatment. The Nominated Person is the appropriate person to contact, rather than (or in addition to) a possible next of kin, carer, guardian, family member or friend.

The Advance Agreement and Advance Consent Direction provide essential information about a consumer's treatment, care and other details of importance. They provide details about who can and cannot be contacted when a person presents for hospital care and treatment. They can also outline de-escalation techniques that work for the consumer, reducing the need for seclusion.

Overarching Comments

Consumers expressed concern that trauma informed language was missing throughout this Procedure, and that it is written based on the medical model with no inclusion of wellbeing or person centred care. While consumers accepted that the audience for this Procedure is clinical staff, they still support the inclusion of trauma informed language and a focus on person centred care in all documentation, not just documentation written primarily for mental health consumers.

Of particular concern to consumers was the Extension of Emergency Detention up to 11 days (ED11) when a 3-day Emergency Detention (ED3) was due to expire over a weekend or extended shut down period (p. 9), such as a public holiday and particularly over Christmas. This seems to be a vast overreach with someone who was to be in hospital involuntary for three days now likely to be in hospital involuntarily for up to 14 days due to a timing issue. On speaking with Dr Denise Riorden and Sonny Ward regarding this particular point, the Network was advised that i) this was necessary due to staff availability over public holidays and ii) if the consumer were to appeal to ACAT that their ED11 was not necessary, and ACAT agreed, then the ED11 would be ended. However, given the lack of support available to consumers to work through the ACAT process, and the difficulties in proving that an Emergency Detention is in fact not required, consumers strongly advocate for this to be reconsidered.

The phrasing of this section of the Procedure is inconsistent with the Act, s85 Authorisation of involuntary detention, which lays out the ability for extensions to emergence detention orders to be made. It states:

- (1) A doctor may authorise the involuntary detention and treatment, care or support of a person at an approved mental health facility for a period not exceeding 3 days*
- (2) Before the end of the 3-day period of detention, the chief psychiatrist may apply to the ACAT to extend the period of detention if the chief psychiatrist believes on reasonable grounds that the person continues to meet the criteria mentioned in subsection (1) (a) (i) to (iv).*
- (3) If an application is made under subsection (2), the ACAT may order that the period of detention be extended by the period, not longer than 11 days, stated in the order.*

We question how, at the time of application for an ED3, the Chief Psychiatrist can possibly ascertain that a person 'continues to meet the criteria' to also prepare an application for a further period of detention.

In the very least, a clear statement must be included that the extension being applied for is for the shortest time possible to prevent consumers being involuntarily detained for any longer than necessary. For example, if a person's ED3 is due to expire on a public holiday, the extension request should be for an extension to the next working day only.

Recommendations

Recommendation 1: bring Section 7.5 'Maintenance, of freedom, dignity and self-respect' to the beginning of the Procedure

Consumers recommend changing the order of this Procedure due to concerns that Section 7.5, *Maintenance of freedom, dignity and self-respect* (p. 13), which contains the statement "Any person exercising a function under the Mental Health Act 2015....must ensure..." should be at the beginning of this Procedure, preferably as part of the Purpose Section as it sets the context of the Procedure. Having this section upfront puts the needs and rights of the consumer at the forefront of any decision making.

Recommendation 2: Definition of 'relevant and reliable' required

The inclusion of 'relevant and reliable information about the persons condition' (p. 5) is subjective and consumers recommend further details be included to assist clinicians to make decisions.

Recommendation 3: Inclusion of Nominated Persons, Advance Agreement, Advance Consent Direction

Consumers were concerned that the people identified as to whom reliable information could be obtained from regarding a person's current mental health state (p. 5) may not be the most appropriate to their individual case. If the consumer has been deemed to not be able to give consent, some qualifying information needs to be included to assure accordance with the Act. Consumers recommend including checking if a consumer has a Nominated Person, Advance Agreement and/or Advance Consent Direction in place, which would help to identify the people a consumer has consented to having information about their mental health.

Specific inclusion of Nominated Person is required in all relevant sections, for example:

- Section 2.3 – ...*person's condition (i.e., collateral information provided from those detaining the person, **Nominated Person**, carers, family etc)*...
- Section 3.3 – ...*given the opportunity to notify their **Nominated Person**, carer, support person, family, friend of their detention.*
- Section 7.4 – ...*given the opportunity to notify their **Nominated Person**, their carer, their family member....*

Recommendation 4: Inclusion of, or reference to, de-escalation techniques

There is currently no reference in the Procedure to de-escalation techniques or to procedures or policies that outline de-escalation techniques. This raises concern that these techniques, known to reduce the numbers of both seclusion and restrictive practice, would not be easily put into practice through the use of this Procedure. At the very least, consumers recommend that the document refer to de-escalation procedures and policies, but would prefer the document to include suggested de-escalation techniques where relevant.

Following on from this, consumers recommended including in the Procedure advice to check to ascertain if a consumer has a Nominated Person, Advance Agreement and/or and Advance Consent Direction. Consumers may have identified de-escalation techniques that work for them in these documents, prepared with their treating team when they had capacity to do so.

Recommendation 5: Consistent terminology regarding clinical roles throughout Procedure

Consumers recommend a consistency check be made of this Procedure to ensure that the right references are made when referring to specific medical officers. Various roles are included in this document e.g. doctors, delegates, Chief Psychiatrist, medical officer, Registrar, and consumers want to be sure that the Procedure identifies the correct officer at the correct time.

Recommendation 6: include reference to the ACT Charter of Rights for People Who Experience Mental Health Issues

Consumers recommend the *ACT Charter of Rights for People Who Experience Mental Health Issues* (the Charter) pamphlet, created by the Chief Psychiatrists Office with mental health peak organisations be included in the information to be given to the person and in the information available at the Approved Mental Health Facility. Consumers recommend that the posters that summarise the Charter, when ready, be distributed throughout the hospital, to assist consumers to know their rights.

Consumers recommend that a reference to the Charter should be included at p. 14, *Related Policies, Procedures, Guidelines and Legislation* section under 'Other'.

Recommendation 7: Corrections to the relevant organisations list (p. 12)

1. ADACAS' full name has been recorded incorrectly. The word 'The' should be removed and 'Advisory' needs to be replaced with 'Advocacy' i.e. ACT Disability, Aged and Carer Advocacy Service, not The ACT Disability, Aged and Carer Advisory Service.
2. The ACT Mental Health Consumer Network (the Network) (cited incorrectly as 'Mental Health Consumer Network (MHCN)') does not provide individual support or advocacy services. For this reason, to avoid confusion, consumers recommend that the reference to the Network be removed, rather than placed with support and advocacy services, and replaced with a sixth dot point for the My Rights, My Decisions brochure to explicitly be provided.