

AMENDMENTS TO THE
MENTAL HEALTH (TREATMENT AND CARE) ACT 1994
FIRST EXPOSURE DRAFT

SUMMARY OF PROPOSED CHANGES

INTRODUCTION

The ACT Health Directorate and the Justice and Community Safety Directorate have jointly undertaken a review of the ACT Mental Health (Treatment and Care) Act 1994. The Review has taken place over several years. It is a major piece of legislation which can have significant impact on the lives of people with mental illness or dysfunction, their families and carers.

During the Review, input from the community and stakeholders has been provided through public consultations, the Review Advisory Committee representing over forty stakeholder groups including mental health consumer and carer representatives, which formulated recommendations, and several working groups.

The Review process has resulted in proposals to introduce a number of important changes, summarised below. The ACT Government believes these changes will ensure that Canberra has a Mental Health Act that addresses the needs of our community and aligns our legislation with mental health reforms occurring in other Australian jurisdictions and internationally.

The Review is planned for completion by the end of 2013.

THE REVIEW FRAMEWORK AND PROCESS

The purpose of the Review has been to ensure the Act reflects best practice in mental health law, as it has developed since the current Act was introduced in 1994. Some important new influences which needed reflecting in the legislation are:

- The implementing of recovery focussed mental health service provision
- The advent of the ACT Human Rights Act 2004 (the HR Act)
- National and international moves toward considering *decision making capacity* as part of the basis for deciding mental health treatment orders (similar to guardianship legislation).
- The adoption of Advance Agreements between consumers and the treating team to guide treatment planning

The Review Advisory Committee (RAC) agreed on the following guiding principles for the review process:

- The legislation should be rights based
- Treatment and care should be provided in the least restrictive environment and with the least restrictive or intrusive methods and
- Voluntary access to treatment in a mental health facility should be readily available and enshrined as a right in the legislation.
- The legislation should aim to protect, promote and improve the lives and overall mental health and well being of citizens

THE CONSULTATION DOCUMENTS

The documents for consultation are:

- The draft Amendment Bill which contains all the amendments to the Mental Health Act resulting from the recommended changes;
- The Explanatory Statement which sets out the intention of the changes, and guides interpretation of the changed Act (for people wishing to understand the proposed changes, this is a useful guide); and
- The ‘mock-up’ of the revised Act which merges the proposed changes with the existing Act to show what the revised Act will look like if the proposed changes are passed.

KEY AMENDMENTS - A BRIEF “PLAIN LANGUAGE” DESCRIPTION

- If a person is assessed to have capacity to make their own decisions, they cannot be placed on an involuntary treatment order. There is a ‘safety valve’ provision that in unusual circumstances where, despite the person’s capacity there is considered to be an overriding risk to their safety or the safety of others, an order can be made.
- If a person is willing to accept treatment, but is assessed as not having capacity to give informed consent, consent to treatment should be given by a guardian, or a person holding power of attorney. In other words, there must be informed consent for any psychiatric treatment.
- Principles and revised objectives are provided to guide interpretation of the Act.
- Restrictions on electro-convulsive therapy (ECT) are increased. ECT is banned under the age of 12. For someone from age 12 and 18, two opinions (from a doctor and a Child and Adolescent Psychiatrist) and an order by the ACT Civil and Administrative Tribunal (ACAT) are required.
- The maximum period of emergency detention is extended from 10 to 14 days.
- Advance Agreements are recognised.
- Powers of emergency apprehension and transport to hospital for assessment are extended to ambulance paramedics, so that they can largely replace police in this role.
- A new class of orders for forensic mental health clients (mental health clients involved with the justice system) is created, that seeks to:
 - ensure the safety of members of the community from risk of serious harm, including through information sharing when care is shared between corrections and health providers;
 - identify and protect the treatment and care needs of people subject to criminal proceedings who are living with a mental illness or mental dysfunction;
 - better meet the needs of people seriously affected by the actions of forensic mental health clients; and

- provide for voluntary mental health patients transferred from a correctional setting to mental health care.
- Several changes are made in order clarify the intention and operation of the Act.

NEXT STEPS

The first Exposure Draft is open for comment until 2 October 2012

The community engagement process provides opportunities for members of the community to hear an explanation of the amendments, their reasoning and implications from people who have been involved in the Review process, and to provide feedback.

A schedule of public meetings is provided with these papers. Members of the public are invited to attend a meeting where the changes are explained and discussed before providing comment online or by email. There will also be opportunity for comment at the meetings.

All public comment received through the website or the meetings will be considered by the Review Advisory Committee and incorporated as appropriate into the second Exposure Draft of the Amendment Bill.

The second exposure draft may also include further amendments to improve 'user friendliness' or clarity of the provisions.

It is expected that the second Exposure Draft will be available for the Canberra community to see how the public feedback was incorporated and provide further comment early in 2013.

YOUR SAY

We want to hear your thoughts on any areas of interest or concern in the amendment bill including any gaps if you think we have not addressed a matter of importance.

When you provide your feedback it would be useful for us to know who you are representing – are you a member of the general community, a consumer, a carer, a mental health practitioner, a community organisation or another professional with a particular interest in some aspect of mental health legislation.

It would also be useful for us to know whether you have read the amendments that relate to your area of concern or the supporting documentation such as the explanatory statement and also whether you have attended one of our information meetings.

You can provide feedback

- through the ACT Government 'Time to Talk' website at <http://timetotalk.act.gov.au/> or
- by email with the subject line '*Mental Health Act Review Feedback*' to mentalhealth.policy@act.gov.au or
- by hard mail to: *Mental Health Act Review Feedback*, GPO Box 825, CANBERRA CITY ACT 2601

We appreciate the time you are taking to provide feedback – thank you.

Review of the Mental Health (Treatment and Care) Act 1994
Schedule of Meetings for Community Consultation
22 August – 2 October 2012

Stakeholder Meetings

Disability Meetings

Contact: Maggie White – Ph: 6205 3885
Email: maggie.white@act.gov.au

Monday 27 August

6:00 -7.30 pm
Ballarn Room 3, Nature Conservation House, Cnr Emu Bank and Belconnen Way, Belconnen

Thursday 30 August

9:30 am – 12:30 pm
Therapy ACT, Cnr Weingarth St and Blackwood Tce, Holder

Carers Meeting

Contact: Doris Kordes – Ph:6296 9936
doris.kordes@carersact.org.au

Tuesday 28 August

5:15 - 7:15 pm
Conference Centre, Quality Hotel Woden, Cnr Melrose Dr and Launceston St, Woden

Mental Health Consumers Meeting

Ph: 6230 5796
Email: actmhcn@actmhcn.org.au

Thursday 30 August

11:00 am – 12:30 pm
ACT Mental Health Consumer Network, Room 8, Level 2, Griffin Centre, Genge St, Canberra City

Mental Health Community Agencies Meeting

Contact: Simon Viereck – Ph: 6249 7756
Simon.viereck@mhccact.org.au

Tuesday 28 August

3.00 – 4.30 pm
Mental Health Community Coalition Meeting Room, 1st Floor, Griffin Centre, Genge St, Canberra City

Open Public Meetings

Southside

Tuesday 4
September

12:30 – 2:00 pm
Health Advancement Room, Tuggeranong Community Health Centre, Anketell Street, Tuggeranong

Northside

Wednesday 5
September

6:00 – 7:30 pm
Function Room, Majura Community Centre, 2 Rosevear Pl, Dickson

Contact: Steve Druitt – Ph: 6207 7927

steve.druitt@act.gov.au