Review of the Mental Health (Secure Facilities) Act 2016

Stakeholder Consultation

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Feedback _ Review of the Mental Health (Secure Facilities) Act 2016 (the Act)

Executive Summary

There is a continuing need to improve services, treatment, oversight and responsiveness of the ACT Mental Health system to ensure that the ACT community, including mental health consumers' best interests, safety of all, and requirements under the Human Rights Act 2004 are met. In summary, regarding the review of the Mental Health (Secure Facilities) Act 2016 there is a need for:

- Increased focus on person-centred care within a recovery-oriented setting
- increased efforts to ensure that time spent in a secure facility is minimal and the need to stay in such a facility is more frequently reviewed and reasons documented.
- better operationalisation, integration and standards across ACT mental health and associated laws;
- improved opportunities for reporting, disclosure and transparency of procedures and data;
- improved clarity about the purpose of advocacy or regulatory agencies and their representatives in the operation of Dhulwa and stepped down care;
- increased enforcement activities following complaints and reviews;
- a shift towards more preventative actions; and
- the promotion of leadership from those who use mental health services, consumers and their nominated representatives or carers (Katterl, 2021).

Submission

Some general comments are first made and then responses according to the template suggested are included. In general, please note that 'mental health consumer' equates to 'patient'. Please note concern about 3.3 (25) Monitoring Mail – that the Review Consultant is not an Accredited person, and hence mail may be searched and monitored. Therefore, this is a concern potentially for Dhulwa patients in considering reporting feedback for this review.

At the Forum of 6 April 2021 with community representatives there was mention of the interaction between the Human Rights Act 2004, Mental Health Act 2015 and Mental Health (Secure Facilities) Act 2016. Additionally, there should be consideration of provisions in the *Children and Young People Act 2008*, and the *Corrections Management Act 2007*, with additional decisions and restrictions imposed on such detained consumers (MH ACT 2015 - Chpt 8) that may be excessive for civil consumers

where accommodated in the same mental health secure facility. There also was limited reference to the role of the ACT Civil and Administrative Tribunal (ACAT) in decisions impacting consumers *ACT Civil and Administrative Tribunal Act 2008*. Key points include:

A. There was a preliminary review conducted by the ACT Human Rights Commission in April 2020. There were a range of issues identified including use of force and the lack of Directions and recommend that the ACT Health Directorate Consultant attend to these issues, ensuring contact with the ACT Human Rights Commission (the HR Commission) direct.
    a. April 2020 – HRC submission – Review of Mental Health (Secure Facilities) ACT 2016 (PDF 203KB)
    b. Additionally, there had been earlier discussion on the Secure Mental Health Model of Care by the Commission, that does not appear to have been addressed.
B. The Secure Mental Health Model of Care (2014) is significantly out of date. This issue had been raised with Canberra Health Services during the redevelopment of the Extended Care Unit (ECU) as part of The Brian Hennessey Rehabilitation Centre. Although advised it is on the work program (Executive Director, MHJHAODS, Karen Grace) it is our understanding there has been no action to date. It needs to be updated and amended appropriately with consultation. For example, it predates both
    a. the commissioning of Dhulwa Secure Mental Health Unit, and the
    b. **Mental Health Act 2015.**
C. This MH (SF) Act legislative review is an opportunity to implement actions under the *Optional Protocol to The United Nations Convention Against Torture and Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)* in the ACT: An overview of existing monitoring mechanisms where people are deprived of their liberty.
    a. Current review mechanisms, eg the Official Visitor, Public Advocate, Health Commissioner are generally complaints based (refer S. 32). This raises issues for consumers whose risk assessments could be jeopardised by a negative concern, even where justified, as the review mechanism regarding complaints is unclear to consumers, carers and nominated persons. More proactively to prevent ill treatment, when enacted an Accredited person from an organisation as part of a designated National Preventive Mechanism could work constructively to reduce risks of abuse or ill-treatment. Given the client mix with some consumers transferred under the Corrections Management Act 2007 (S.54) there is an opportunity to review practices and suggest improvements.
    b. For example, use of Seclusion - ACT has high rates in the country and forensic seclusion is increasing - refer Australian Institute of Health and Welfare report, and recommendations of Victorian Royal Commission. Mental health services in Australia, Data - Australian Institute of Health and Welfare (aihw.gov.au) . Canberra Health Services (CHS) had a seclusion rate of 12.3 per 1000 bed days in 2019-20 (refer Figure RP.5) and a rate of physical restraint of 11.3. Nationally the restraint rates for forensic services average 69.3 events per 1,000 bed days across Australia, so it is assumed that the CHS rates are higher in the Dhulwa setting, but this information couldn't be located. This should be investigated, as there is no provision in this MH Secure Facilities Act to report on seclusion.
    c. This OPCAT is expected to be enacted by January 2022 across Australia. This should include both representatives from registered independent bodies such as ombudsman or commissioner roles, but also enable a role for civil society, such as consumer representatives to advocate for humane treatment (Minty, 2019: Refer Involving civil society in preventing ill treatment in detention: maximising OPCAT's opportunity for Australia). Contact for this work is with the Justice and Community Safety Directorate: Erin.Maher@act.gov.au.
D. Current arrangements of the Act on consumers within the sub-acute/rehabilitation wing are too restrictive for some consumers in some areas, and we would argue do not appropriately balance the care and human rights of consumers with the potential risks to the community. The restrictive nature of visits, layout, access to

the gym, and limited electronic communications are examples. For community or civil patients, the environment is not the least possible restrictive according to the MH Act 2015, ss 211 (3)

a. *the extent to which people receiving treatment, care or support for mental disorder or a mental illness at the visitable place are being provided the best possible treatment, care or support appropriate to their needs in the* ***least possible restrictive environment and least possible intrusive manner*** *consistent with the effective giving of that treatment, care or support*.

E. There is a lack of transparency on decisions and procedures. There is insufficient information, in a form patients are most likely to understand, available to consumers, carers, and nominated persons on directions and policies, as well as opportunities to review. Advice from a previous Operational Director and Assistant Director of Nursing was conflicting, and members of the Forum were advised to understand processes by looking it up on the internet, so are not clear on what is available to staff compared to the community.

F. Complaints records should be investigated both for Canberra Health Services, the Health Commissioner, Official Visitors, and Public Advocate. Enabling access by community advocacy agencies to Dhulwa would assist with the oversight and representation to enable improved responsiveness and assurance that human rights are not being excessively restricted.

Template for response

	Section of the Act	Feedback and/or observations (+/-) If you consider this section of the Act would benefit from change	please explain what and how you would change the Act?
1	**Part 1 Preliminary**	7(2) - Note that: a secure mental health facility (b) *provides for, or will provide for, the involuntary detention and treatment of people, including correctional patients and forensic patients.* Although in the Declaration and Consultant's advice – only Dhulwa is specified – other facilities in the ACT also carry out this function – eg Adult Mental Health Unit, and the Extended Care Unit, although with leave provisions, as at times locked facilities. Need to more precisely define and describe what is a secure facility and its purpose.	It is unclear of the facilities covered by the wording in the Act. Although the Minister 'may' make the declaration this is unclear. There has been some discussion that a future Secure Mental Health Model of Care could cover the ECU. If that is to occur then there needs to be more discussion and clarification of the scope of the declaration, and both the Act and the Model of Care. More precisely define and describe what is secure facility and its purpose.
2	**Part 2 Administration**	The lack of Directions – as mentioned in reference to the HR Commission above - is particularly concerning as there is not clear guidance. This includes: 1. Prohibited things (s 10) 2. Contact with family (s 16) 3. Patient requests for no contact with stated people (s 19) 4. Electronic Communications (s 24) 5. Visiting conditions (s 28) 6. Provision of trade services (s 73) There appears to be no Directions on • 'leave' on consumers. • Transition / Discharge	(s 10) Prohibited things – it is unclear what items are prohibited, although there is building signage. Other items are potentially reviewed by the Multidisciplinary team (MDT). Reading material, exercise books, if have staples, food items. Guidance is lacking. (s.16) Additionally, by including electronic communications devices this essentially prevents/restricts consumers from undertaking tertiary educational activities: Please note the rights to education including to further education (Human Rights ACT 2004 S.27a) and disability discrimination (Disability Discrimination Act (1992)). This also includes the rights to education in detention: https://hrc.act.gov.au/wp-content/uploads/2015/03/Right-to-Education.pdf *(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;* while s20 of the Discrimination Act 1991 (ACT) prevents discriminatory denial of services (which may include education) by government.
3	**Part 3 Contact**	Although there appear to be some guidance through internet searching available operational procedures (if you can find yourself rather than provided by the facility), these are not comprehensive. Eg	A guide to consumers, carers and visitors should be a requisite and included in the Act outlining the implementation of the MH Secure Facilities Act and the interaction with the MH Act and CHS procedures.

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		(s.28). such as Dhulwa Mental Health Unit - Visitors, Members of the Forum have never seen - *A copy of the DMHU Welcome Handbook will be given to the family*.	
4	**Division 3.1 Contact generally**	15. The director-general has not enabled sufficient contact with patients/consumers' family, friends and others. This has been excessively restrictive by not enabling email, even though those at AMC – Corrections facilities have had access. – refer 3.2 (1) 16. (2) access to family and friends has been limited. For example, only three people have been approved to enable contact using the phone service. During bushfires and technology breaks this was insufficient. This should be amended to be broader – there is no direction that this should be limited to 3.	15 (a) The Act should be amended to '*ensure that the benefits of contacting family and friends should be mandated through email and video call means', unless Section 16 (4) applies*. 16 (2) The Act should be amended to *In particular, the director-general must ensure that adequate facilities are available to contact an accredited person* ***or nominated family member/carer (if nominated person not identified*****.** 17 (3) and (5) should be amended to also include *advice to nominated person or nominated family member/carer*
5	**Division 3.2 Contact—monitoring electronic communications**	Note as above, there does not appear to be a Direction on Electronic Communications (s 24) There have been restrictions on availability of electronic communications. Although ipads have been available under supervision, communication with family and friends has been significantly limited especially in a form that would most suit the patient – ie written rather than verbal.	Complaints have been raised for more than two and a half years to two Ministers for Mental Health and to date this still has not been addressed. Address complaints and appropriately enact the Act.
6	**Division 3.3 Contact—monitoring mail**	The Act 25(6)(b) indicates that *does not include reading any correspondence included in the mail.* However, this doesn't make sense as *26 (3)* indicates that the mail must have been read to determine if a serious offence may be involved	Adjust wording in section 25 and 26. Increase emphasis on 25(2) of not applying to mail sent or received from an Accredited person
7	**Division 3.4 Contact—visitors**	Note as above, there does not appear to be a Direction on Contact – visitors (28) Although there appear to be some guidance through operational procedures, Dhulwa Mental Health Unit - Visitors,– '*A copy of the DMHU Welcome Handbook...*'(ref 2.5, p.7 of Operational procedure) has not been sighted. Visits to patients have been cancelled, curtailed, restricted with no written advice. Some phone information was provided but this was at short notice. The Forum is aware that 24 hours notice must be given, but this is subject to staff and scheduling.	Prepare a Direction (28) including information on out of business hours visits and requests for leave for contact with family. Provide additional information on website or at facility. Requests to have more extended visits have mostly been refused due to operational constraints. More flexibility is required with stable consumers. When seeking permission to visit, the appointment time needs to be reasonable and not delayed.

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8		32 Amend *Visits by public trustee and guardian etc*	Incorporate OPCAT principles for 2021 with access by those from an organisation identified as a National Preventive Mechanism
9	**Part 4 Searches of patients**	Nil comment	
10	**Division 4.8 Use of force**	According to the Mental Health Act 2015, there is an obligation to 'Report and record of use of restraint etc' In the MH(SF) Act 2016 there is reference to the Use of Force but there is no mention to other restrictive practices such as involuntary seclusion, or the forcible giving of medication. For completeness and given the physical restrictions then these should be appropriately managed and recorded.	In addition to register on Use of Force, there should also be a register of 'Use of Involuntary Seclusion'. In addition to register on Use of Force, there should also be a register of 'forcible giving of medication'.
11	**Part 5 Notification and review of decisions**	Operationally concerns by carers have first been raised with staff of Dhulwa, then Canberra Health Services comments and complaints, then Executive Director of MHJHADS, then potentially, the Health Services Commissioner, should the consumer agree. At times complaints have not consistently been resolved to the complainants' satisfaction.	There should be clearer specification of the possibility for review prior to taking to the ACAT. This could consider additional items to those contained in Schedule 1, column 3, including 'leave' and 'diet' and other options for second opinions in psychological and psychiatric medical prescriptions and treatment as part of the MH and HR Act. The physical environment and vulnerable nature of patients restrict consumers' ability to advocate sufficiently. There should be greater capacity for civil or consumer representation organisations to advocate for those with health and disability limitations to enable a greater recovery focus. There should be a clearer complaints' process and a broader role for ACAT in reviewable decisions
12	**Part 6 Authorised people**	The main authorised people in the current Act refer to security staff. There should be another provision as experience has indicated that some security staff were not effectively performing their duties, even if they may have been capable of it. Examples include: poor COVID practices, not securing doors appropriately.	Include additional item under 69: 3 (g) *is found not to be competently exercising the functions of an authorised person for the Act*
13		Other staff could include cleaners or 'peer workers' for example, and similarly should be appropriately skilled to work in a mental health environment and vetted	Include additional item under Part 6 for other appropriately trained staff suitably vetted for working with vulnerable people

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14	**Part 7 Miscellaneous**	Also include information on Emergency situations such as arrangements during Bushfire Warnings, and restrictions to visits such as during 2020 COVID. This should be reviewable. Numerous requests were forwarded to Canberra Health Service, Public Advocate, Carers ACT, as decisions were excessively restrictive given the long-term nature of some consumers residence during 2020. Health checks need to be more prescribed.	Include additional sections on: Emergency situations. Include as part of review schedule. The frequency of health checks should be stated as opposed to 'regular'.
15	**Schedule 1 Reviewable decisions**	List should be expanded to include other potential direction including 'leave', Transitions/discharge, other considerations. There needs to be a broader appeal process for people in-care to question a decisions they are unhappy with.	The schedule should be amended to include reference to carers. Should the updated Carer Recognition Act be enacted, then additional references should be included in this Act.
16	**Dictionary**	Update to reflect legislation and additional roles	Update to include: Carers Authorised health practitioners list Peer workers
	Additional comments	**Where possible, please identify direct relevance to a specific section of the Act**	
17	Other legislation – eg consistency and comprehensive referencing	Some notes are included where there may be other relevant legislation, but this is selective. For example: 9 (2) *A SMHF direction must be consistent with this Act and the Mental Health Act 2015*, but there is no mention of the Human Rights Act 2004. This applies to other subsections.	Other legislation that could be more comprehensively referred to includes the Human Rights Commission Act 2005 Information Privacy Act 2014 applies to a range of other components under Part 3 Contact
18	These issues may be more procedural rather than legislative but they highlight the perceived imbalance of the Act in insufficiently recognising the rights of consumers involuntarily detained and	Part 7. Miscellaneous – additional sub-heading To balance recovery principles with the safety requirements there needs to be inclusion of the **Use of Mandatory National Outcome Measures in Mental Health Service Delivery Areas.** This procedure has been put in place in other CHS operations. Why not Secure Mental Health? The use of outcome measures assists identify whether change has occurred for a consumer as a result of mental health care. By	Incorporate references to Mandatory Reporting standards/legislation: Your Experience of Service (YES) Reference Feedback on improvements in service of the operations in the Mental Health (Secure Facilities) Act

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	their role in recovery and advocating change. It refers to work by the Australian Mental Health Outcomes and Classification Network (**AMHOCN)** Mandatory Reporting MH outcomes: consumers	using a range of outcome measures, consumers and clinicians can work together to map recovery over time.	
19	Mandatory Reporting MH outcomes: carers	Part 7. Miscellaneous – additional sub-heading. As above. There is no opportunity to provide feedback or reporting.	Incorporate references to carers in schedule and Carer Experience of Service (CES)
20	ACT Charter of Rights for People who experience mental health issues	In preliminary Part 1. there should be greater recognition of the need to ensure adherence to the Human Rights Act, and ACT Charter of Rights	Need for reference in Act as part of human rights obligations, and must be made available to all consumers and their families or nominated person.
21	Disability Justice Strategy	Need to consider whether these operations and restrictions are reasonable and communicated effectively to consumers and carers being mindful of the impact that the disability may have on communication - refer ACT disability-justice-strategy	Identify other opportunities to recognise and inform consumers and carers
22	National Mental Health Standards	Needs clearer alignment or links with national standards	Include more explicit references to standards
23	Vulnerable – gender segregation/young people??	Need greater recognition of impact on women and young people	Include reference to specific vulnerabilities, and methods to address
24	Impact on staff – ensuring an appropriate balance of therapeutic intervention compared to risk management	Reference to Work Health and Safety legislation. 'Safe Wards' was to be introduced but are unclear of the outcomes and what suggestions could be included in procedures and legislation amendments	

Please send your completed submission to MHACTREVIEW@act.gov.au no later than Friday 14 May 2021