QON No. 35

Legislative Assembly for the Australian Capital Territory
Standing Committee on Social Policy

Inquiry into Annual and Financial Reports 2023–2024

Answer to question on notice

Asked by: Ms Chiaka Barry MLA

Addressed to: Minister for Mental Health

Reference: Mental Health

Hearing: 11 February 2025
In relation to: Emergency detention under the Mental Health Act
Question received: 19 February 2025
Answer Due: 26 February 2025

Chapter 6 of the Mental Health Act 2015 relates to Emergency detention (the power of police to detain someone for urgent psychiatric care).

Given the risks of detention exacerbating mental health, what processes do you have in place to review the appropriateness of the use of the emergency detention power by police?

Have you identified cases where the use of the Emergency detention power has had an adverse impact on an individual's mental health?

Noting the consequences of s90 of the Mental Health Act, what mechanisms are in place to ensure that a detained person has reasonable access to facilities, and adequate opportunity, to contact the public advocate and the detained person's lawyer?

Were there any instances in 2025 where obligations under s90 were not complied with? Please provide the number of any such instances in 2025?

How would a failure to comply with a s90 obligation be brought to the attention of the senior managers?

What are the consequences for staff of not complying with a s90 obligation?

MINISTER FOR MENTAL HEALTH: The answer to the Member's question is as follows:

The Office of the Chief Psychiatrist conducts routine audits of different provisions within the *Mental Health Act 2015* (the Act). The last desktop review of files concluded that all documents relating to emergency apprehension by police were completed appropriately and met compliance with the provisions within the Act.

The circumstances surrounding emergency apprehension are often complex and challenging. Apprehension can be required for the safety of the individual and for the safety of others. The

emergency apprehension process will, at times, have an adverse impact on an individual's mental health, but this must also be weighed against the benefit the person is likely to receive from treatment. Canberra Health Services (CHS) receive numerous complaints about the apprehension process and each complaint is reviewed internally via their complaint resolution process. If the complaint is made directly to the police, it would be reviewed by their internal investigations and the ACT Health Directorate would have no visibility of this.

When a person arrives at a mental health facility, they are oriented to the environment that is assessed to best suit their needs for the safe and effective management of their mental health. During the detention, the person is provided with reasonable access to facilities and staff can assist the person with placing a call if they are not able to do so themself. Staff are aware that the person must be allowed access to the Public Advocate or a lawyer of their choice and routinely assist the person to do so via phone or email. Public Advocate and Legal Aid routinely assist mental health consumers who are detained under the Act. Numerous CHS operational procedures outline the obligation of staff to give access to the requirements of section 90.

Any offences committed under section 90 would be brought to the attention of senior managers through the clinical incident mechanism and complaints process. To date there have been no such incidents identified.

If after investigation, a staff member was found to have committed an offence under section 90, they could be prosecuted and subject to the penalty provisions contained within the section.

Approved for circulation to the Standing Committee on Social Policy

Signature:  Date: 28/2/25

By the Minister for Mental Health, Rachel Stephen-Smith