

***ACT Mental Health Act 2015:***

**Review of the Authorised Period of Emergency Detention**

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**ACT Health Directorate**

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## Introduction

The *Mental Health Act 2015* (the Act) came into effect on 1 March 2016. The Act was designed to give people in the ACT living with a mental illness or mental disorder, and their carers and family members, greater opportunity to contribute to decisions on their treatment, care and support.

The ACT Government is conducting two reviews of the Act:

- A review of the authorised period of emergency detention under the Act – the subject of this report; and
- A review of the operation of mental health orders and forensic mental health orders under the Act, including their implementation. This review commenced in March 2019.

## Emergency Detention under the Act

A fundamental principle of the Australian healthcare system is that a person has the right to choose if, when and how they wish to receive treatment for any medical condition they may have. This applies equally to persons with a mental illness.

Involuntary treatment should only be used as a last resort, and when possible, a person should retain the right to make informed decisions about their own lives, including their own health care.

The Act states that a person who is believed to be at risk of harm to themselves or others due to a mental disorder or mental illness may be apprehended by an appropriate authority as described in the Act and, if reasonable grounds exist, the person can be detained at an approved mental health facility for assessment.

Once detained at an approved mental health facility, an initial examination by a doctor should occur within four hours, with the possibility of a further two-hour extension period.

The doctor who conducts the initial assessment may then authorise involuntary detention and treatment, care and support at a mental health facility for a period of no more than three days. To do this the doctor must have conducted an initial examination and believe that all of the following apply:

- the person requires immediate treatment, care or support for a mental illness or mental disorder;
- the person has refused treatment, care or support;
- detention is necessary for the person's wellbeing or for the protection of someone else or the public; and
- adequate treatment, care or support cannot be provided in a less restrictive environment.

A second doctor must also examine the person and agree with all of the above points.

## Extension of the period of detention

Under section 85 of the Act, during the three-day period of emergency detention, if a Consultant Psychiatrist (as a delegate of the Chief Psychiatrist) believes on reasonable grounds that all the points listed above still apply then an application may be made to the

ACT Civil and Administrative Tribunal (ACAT) for an extension of the period of detention for a maximum of a further 11 days.

Should ACAT grant any extension to a person's initial three-day period of emergency detention, then that person may apply to the ACAT for a review of that decision. ACAT must conduct that review within two working days.

If at any point, either the doctor who conducted the initial examination, the Chief Psychiatrist or ACAT are satisfied that the detention of a person under section 85 is no longer required then the person must be released from emergency detention as soon as practicable.

Upon expiry of the extension period granted by ACAT, a person either is required to be immediately released or, prior to the end of the period, the Chief Psychiatrist may apply to ACAT for a mental health order that authorises the person's ongoing involuntary treatment for a longer term of up to 6 months.

Under section 85 (3) of the Act, the maximum allowable further period of emergency detention increased from seven days under the previous Act, to eleven days in the current Act.

This was intended to:

- enable a more comprehensive assessment of a person before a Consultant Psychiatrist considers applying to ACAT for a mental health order that authorises the person's involuntary treatment for a longer term; and
- allow more time for that person to become less acutely unwell and therefore potentially reduce the need for further involuntary treatment under the Act.

# Review of the maximum period of further detention under section 85 of the Act

## Review purpose and scope

Under section 271 of the Act, the Minister for Mental Health must invite public submissions and review the maximum further period of detention under section 85. This review specifically focuses on whether section 85 (3) of the Act is functioning appropriately and as intended.

## Review approach

Planning for this review, as well as the wider review that commenced in March 2019, began in December 2016. An evaluation framework and plan was completed in April 2017 that contained a series of key evaluation questions that apply to this initial review and the later wider review.

During planning for the reviews, a multi-stakeholder working group worked with the review team to prepare a program logic model that articulated the relationships between elements of the Act and their intended outcomes. The increase in the maximum period of further detention from seven days under the previous Act<sup>1</sup> to eleven days was proposed because it was thought that the extra time would allow a greater chance for people under emergency detention to have their condition stabilised and therefore require fewer subsequent Psychiatric Treatment Orders (PTO). It was noted that the specific review of section 85 (3) called for under section 271 of the Act, was intended as a safeguard to ensure that the intent of the legislation was being achieved.

The relevant key evaluation question in this review is: What effects have been observed as a result of the extension of the maximum period of further detention under the emergency detention provisions of section 85?

## Methods

Data to inform this review was gathered by the following combination of qualitative and quantitative methods:

- A call for public submissions, open from 23 August to 12 October 2018;
- An online survey, open from 23 August to 12 October 2018 to anyone interested in the subject matter of the review;
- Telephone interviews conducted in October 2018 with health service professionals and members of community advocacy organisations; and
- Data extracted from the ACT Health Directorate records system, MAJICeR.

During the public consultation phase, respondents to the call for public submissions, as well as survey respondents and interviewees, were invited to also provide general feedback on the operation of the Act and how it supports doctors and relevant professionals to provide the best treatment, care and support for people. The feedback received will be reported as part of the wider review that commenced in March 2019.

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<sup>1</sup> *Mental Health (Treatment & Care) Act 1994*

## Limitations

All evaluations have limitations related to their scope, data collection methods and analysis methods. Findings should be interpreted in the light of those limitations.

We note that only a very small number of persons with experience of treatment, care and support under the Act responded to the survey, and likewise their carers or family members. It is very difficult to reach this target group through calls for public consultation, especially as people often have short periods of exposure to mental health services and emergency detention is a distressing experience in its own right. It is understandable that the limited scope and reach of this initial review resulted in a greater proportion of responses from mental health services and emergency services personnel.

The small number of survey responses, public submissions and interviews in this review means that no meaningful interpretation of statistical significance is possible for those data. Inferences from qualitative data from a very small number of sources should be drawn cautiously.

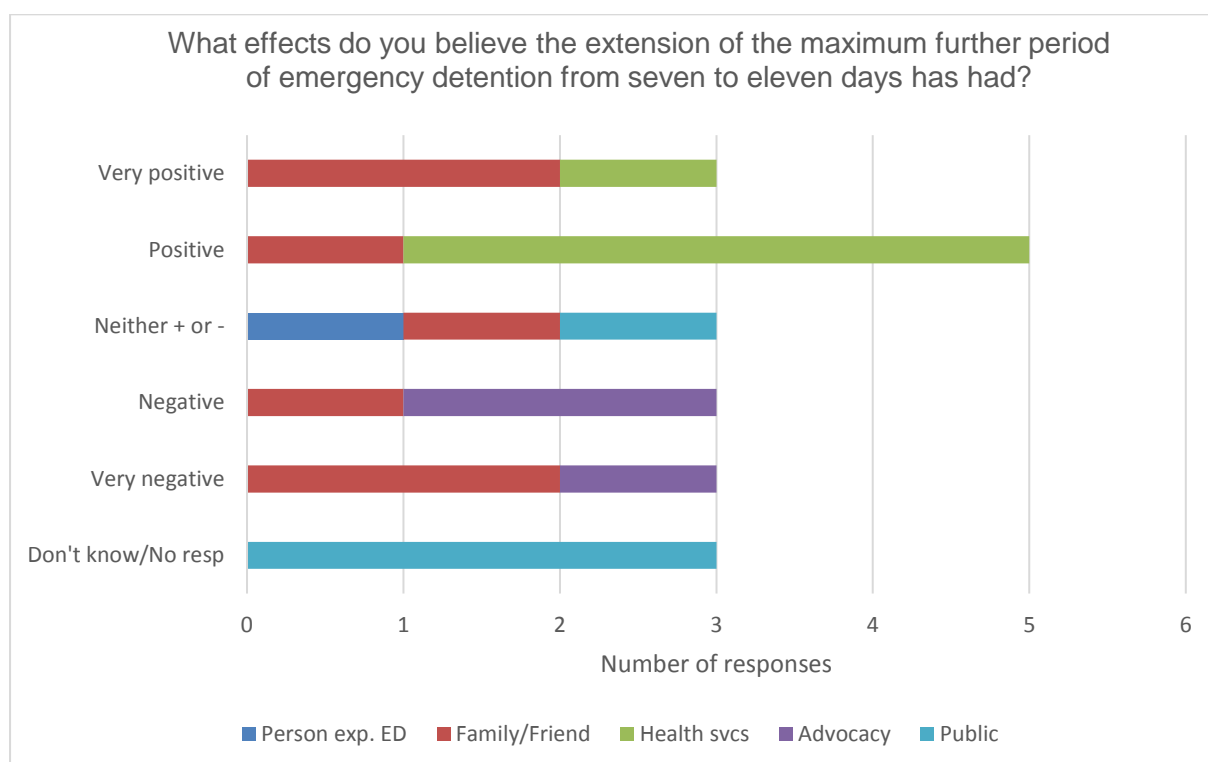
## Consultation data

### Survey

Twenty responses were posted online, from persons identifying themselves as follows:

- Person who has experienced a period of involuntary detention under the Act – one response;
- Family member or friend of a person who has experienced a period of involuntary detention under the Act – seven responses;
- Health services worker with knowledge or experience of the emergency detention provisions of the Act – five responses;
- Member of a health services advocacy or representative organisation with knowledge or experience of the emergency detention provisions of the Act – three responses; and
- Interested members of the public – four responses.

Respondents gave their ratings of the effect of the extension of the maximum further period of emergency detention – see Figure 1 below.



*Figure 1: Rating of effects of extension of maximum further period of detention*

The survey results show that:

- Health services professionals who responded held positive views about the extension of the maximum further period of detention. Supporting comments cited the time needed for medication to stabilise the person undergoing treatment and care.
- Family and friends who responded held views covering the range from very positive to very negative. Positive comments noted the need for stabilisation of the person

receiving treatment and care. Comments in support of negative ratings referred to the traumatic nature of involuntary detention for the persons being treated.

- Members of advocacy or representative organisations who responded held negative views, with comments focusing on care in the community and the undesirability overall of emergency detention. One view expressed was that even seven days emergency detention was a '*harsh policy*'. However, we note that representatives of community agencies interviewed for the review stated that they have not received complaints about the extension.

It should be reiterated that the very small number of responses means that interpretation is necessarily limited.

## Interviews

Six telephone interviews were conducted with people from ACT Health Directorate, ACAT and community advocacy and representative organisations.

There was a consensus among those interviewed for this review that no adverse impacts have been reported or observed as a result of the extension of the maximum further period of emergency detention from seven to eleven days. This is not to say that adverse incidents have not occurred. Simply, that interviewees were not aware of any. However, representatives of community agencies noted that they have not received complaints about the extension.

There was general agreement that the extension appears to be supporting good clinical practice by providing more time for comprehensive observations and assessments to be made. There was consensus that the extension is providing time for people to stabilise.

The extension appears to have led to a decrease in the making of PTOs. The need for detailed analysis to confirm whether this was the case was emphasised. It was thought that the extension has also resulted in shorter orders being made by ACAT. It was emphasised in one interview that that decisions related to the granting of a PTO should be referenced specifically to the current admission rather than being reliant on or influenced by historical records. The extension of emergency detention may have influenced this.

A query was raised about the need to assess whether guardianship orders have been made in the place of PTOs.

People are informed in a number of ways including on the front of orders that they can seek a review at any time.

It was reported that there is some difficulty in implementing the orders as the Act requires if a person is admitted on a Thursday evening or Friday. Doctor availability can be an issue particularly if the Monday happens to be a public holiday. There is a possibility that doctors are having to rush emergency detention, three-day order, (ED3) assessments. Also, it appears that more emergency detention, 11-day order's, (ED11) are being made on a Friday. A suggestion was raised to consider whether it would be better to have 4 plus 10 days rather than 3 plus 11 to better enable access to doctors within the available timeframe. Other suggestions focused on the need to improve doctor availability on weekends and public holidays.

Additionally, it was suggested that the use of the initial period of three-day detention be fully utilised to maximise opportunity for recovery within that period. It was recommended that applications for ED11 should be restricted to submission to ACAT on day three of the ED3. This could be considered for inclusion in the Act.



## Public submissions

Thirteen submissions were received: eight submissions from health professionals; one from a member of the public; and one each from ACT Justice and Community Safety, ACT Policing, and the Public Advocate and Children and Young People Commissioner (PACYPC).

In common with interview responses, comments in public submissions about the change in the maximum period of further detention (section 85 (3)) were all positive. Comments referenced impacts on allowing time for recovery and avoidance of PTOs. No harmful effects were cited.

Many more comments received in this round of consultation were relevant to other sections of the Act and their implementation. The information, which includes commentary on other aspects of how emergency detention is implemented, has been used to inform the wider review that commenced in March 2019.

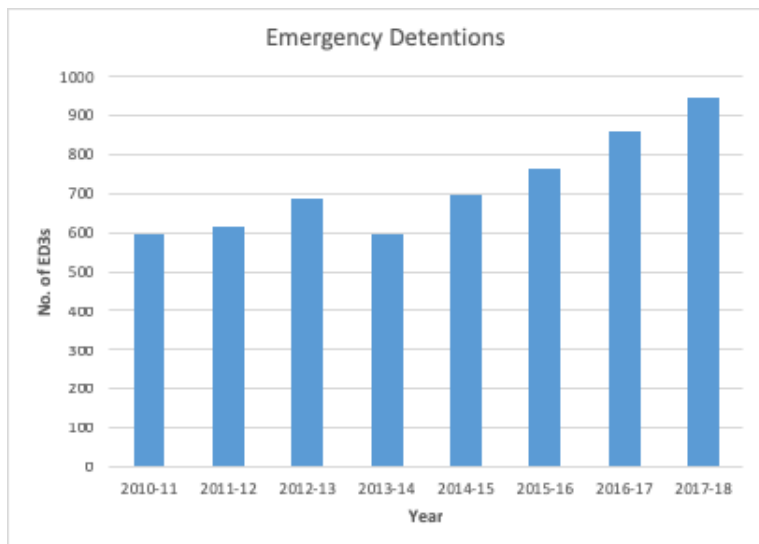
## ACT Health Directorate data

ACT Health data shows a large decrease in PTOs and Community Care Orders (CCOs) following the commencement of the Act, as shown in Table 1 below. These results are positive indications that the intent of the increase in the period of further detention in the Act has been achieved, i.e. by enabling a slightly longer period of care, the need for PTOs and CCOs has been reduced, although the number of people on involuntary detention with no subsequent mental health order who were re-admitted within 28 days has increased.

*Table 1: Data from MAJICeR – 2-year periods before and after commencement of the Act*

<b>Data item</b>	<b>Before commencement of the Act 1/3/2014 – 29/2/2016</b>	<b>After commencement of the Act 1/3/2016 – 28/2/2018</b>	<b>Change</b>
Number of Mental Health Orders	6,494	6,455	– 0.6%
Number of Psychiatric Treatment Orders	2,196	1,659	–24.5%
Number of Community Care Orders	45	26	–42.2%
Number of Emergency Detentions (ED3)	1,474	1,741	+18.1%
Number of ED extensions (7-day prior to the Act; 11-day after the Act)	684	773	+13.0%
Proportion of People on ED with a Subsequent Mental Health Order	47.6%	44.7%	–2.9%
Proportion of People on ED with No Application for Subsequent Order	40.5%	37.2%	–3.3%
Proportion of Mental Health Orders Revoked Before Expiry	55.9%	54.1%	–1.7%
Number of People on Involuntary Detention with No Subsequent PTO/CCO Readmitted within 28 Days	26	63	+140%

It should be noted that these results have been achieved against a backdrop of a growing number of emergency detentions throughout the period immediately before and after the commencement of the Act. Annual data published in the ACT Health Annual Reports, Chief Psychiatrist's Annual Reports, between 2010-11 and 2017-18 are shown in Figure 2 below.



*Figure 2: Number of Emergency Detentions*

The Act commenced in March 2016, so it was effective from the last three months of 2015-16 onwards.

## Conclusion and recommendation

### Conclusion

It is concluded that the change in the maximum period of further detention from seven days to eleven days in section 85 (3) of the *Mental Health Act 2015* has had predominantly positive effects and no detrimental impact.

Because of the limited scope of this current review – section 85 (3) of the Act – no other conclusions have been drawn at this stage.

We note that an update to the commentary on section 85 (3) will be included in the final report of the wider review that commenced in March 2019.

### Recommendation

#### ***Recommendation 1:***

It is recommended that the maximum period of further detention defined in section 85 (3) of the Act remain unchanged.