



19 March 2020

Mr Jon Ord
Acting Executive Branch Manager
Mental Health Policy Branch
Policy, Partnerships and Programs Division
ACT Health Directorate

By email: Jon.Ord@act.gov.au

Dear Jon

I refer to the meeting between you, Jodie Griffiths-Cook, Public Advocate and Children and Young People Commissioner, and staff of the Commission on 21 February 2020.

I understand that the meeting discussed the review under s 79 of the *Mental Health (Secure Facilities) Act 2016*, which is required to be conducted as soon as practicable after the end of the 3rd year of the Act's operation with a report to be presented to the Legislative Assembly within 3 months after the review is started.

I also understand that due to the short timeframe for the review, it is intended that if any significant issues are identified that these be noted for further consideration.

Some issues which were identified at the meeting related to:

- Some provisions appear to contain broad tests. For example, the test for the person in charge of a facility to decide that a patient should not contact a person who has asked not to be contacted is that the person in charge is satisfied that there are 'good reasons' why the patient should not make contact (s 20). There is a narrower test in a general provision allowing the Director-General to limit a patient's contact with others if the Director-General believes on reasonable grounds that the limit is 'necessary and reasonable to avoid prejudicing the effectiveness of the patient's treatment' (s 17).
- Some provisions appear to be unreasonably limited, for example, s 63 provides for a doctor to examine a patient only if they have been injured by the use of force. However, the Direction made under s 60 of the Act provides that if a consumer is subject to the use of force, they must be examined by a doctor as soon as possible (without any reference to being injured). I understand that the policy at Dhulwa and the Adult Mental Health Unit is that a doctor should examine a patient after the use of force.

- The fact that no Directions have been made under several sections of the Act in relation to:
 - o Prohibited things (s 10)
 - o Contact with family (s 16)
 - o Patient requests for no contact with stated people (s 19)
 - o Electronic Communications (s 24)
 - o Visiting conditions (s 28)
 - o Provision of trade services (s 73)
- The lack of a Direction about what constitutes a prohibited thing is significant given that the Revised Explanatory Statement identified s 10 relating to prohibited things as engaging s 12 of the *Human Rights Act 2004*, which is concerned with the right to privacy. Patients and visitors can be searched for prohibited things as can the mail of patients (unless it is to or from an accredited person). To protect the right to privacy in this context it would be useful for there to be guidance on what is a prohibited thing and how the Director-General makes a declaration about what is a prohibited thing.

Following the meeting, the Commission has given further consideration to issues relating to the provision for the person in charge of the facility making a decision that a patient should not contact a person who has requested not to be contacted (s 20) , particularly in circumstances where the patient has entered the facility through a criminal justice pathway and the person requesting not to be contacted has been harmed by the patient. We note the criminal justice system has measures in place to prevent contact between offenders and victims of crime, for example the [Corrections Management \(No-Contact List\) Policy 2019](#), and suggest consideration of comparable measures at a secure mental health facility to ensure the safety and wellbeing of community members. Such measures could be included in a Direction.

In addition to the above issues, I also understand that prior to the passage of the Act, the Standing Committee on Justice and Community Safety (the Committee) in Scrutiny of Bills Report No 45 recommended that Directions under the Act be made as Disallowable Instruments rather than Notifiable Instruments to allow greater scrutiny. The then Minister for Health responded that the recommendation was not supported as equivalent tools under the *Corrections Management Act 2007* and the *Children and Young People's Act 2008* which related to places of detention were Notifiable Instruments and there needed to be consistency. However, in recognition of the Committee's comments and to ensure a degree of oversight, the then Minister advised that he had instructed ACT Health to ensure that the Human Rights Commissioner and other accredited visitors under the Act would be actively involved in the consideration and drafting of Directions.¹

In light of this response, and your indication that there will be further consideration of any significant issues identified in the short review currently underway, I look

¹ See https://www.parliament.act.gov.au/_data/assets/pdf_file/0004/903739/Report-46.pdf

forward to further contact from the Health Directorate in relation to reviewing the Act and preparing Directions made under it.

Yours sincerely

A handwritten signature in blue ink that reads "Helen Watchirs". The signature is written in a cursive, flowing style.

Dr Helen Watchirs OAM
President and Human Rights Commissioner