

# Apprehension and detention

Issues covered include:

- Apprehension
- Detention
- Emergency detention (to provide involuntary care)

For an explanation of all technical definitions and terms used in this module, please refer to the [Definitions of terms used in the Mental Health Act 2015](#).

## Apprehension

A person may be apprehended and transported to an approved mental health facility under section 80 by:

Box 1: Apprehension by a **police officer or authorised ambulance paramedic**

A **police officer or authorised ambulance paramedic** who believes that the person:

- has a mental disorder or mental illness, and
- has attempted or is likely to attempt suicide or to inflict serious harm on themselves or another person (s. 80(1)), and
- the person needs to be examined by a doctor immediately, and
- does not agree to this.

**Alert:** In apprehending the person and transporting them to an approved facility, the police officer or paramedic is not required to make a medical assessment.

**Alert:** Prior to apprehension if the person consents to examination and to be transported voluntarily, this is done without use of apprehension provisions.

Box 2: Apprehension by a **doctor or mental health officer**

- A **doctor or mental health officer** who believes on reasonable grounds that the person has a mental disorder or mental illness, and either:
- the person requires immediate treatment, care or support, or
- the person's condition will deteriorate within three days to such an extent that person would require immediate treatment, care or support, and
- the person has refused to receive treatment, care or support, and
- detention is necessary for the person's own health or safety, social or financial wellbeing, or for the protection of others, and
- adequate treatment, care or support cannot be provided in a less restrictive environment (s. 80 (2)).

## Use of force

The police officer, authorised ambulance officer, doctor or mental health officer may use reasonable force and assistance necessary (including searching the person and removing an item) to enter any premises to apprehend, remove or take the person to the approved mental health facility (ss. 263 and 264).

Also, review 'report and record use of restraint, involuntary seclusion and forcible giving of medication' in *The use of restrictive practices under the Mental Health Act 2015* module.

The person conducting the apprehension must complete the **Statement of Action Taken form** and must provide this to the person in charge

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of the facility. This must contain the following information:

- Name and address of the person taken to the facility
- Date and time that the person was taken to the facility
- The nature and extent of any force or assistance used to enter any premises, or to apprehend the person
- The nature and extent of any restraint, involuntary seclusion, or forcible giving of medication used, and
- Anything else that happened that may affect the person’s physical or mental health.

### Right to review

**Alert:** A person who is apprehended by the police or a paramedic has the right to request a review of the apprehension by ACAT (s. 80 (3)). If a review is requested, ACAT must review the decision within 2 working days of the application being made.

## Detention

Box 3: Detention of person **taken to** an approved mental health facility.

If a person is taken to an approved mental health facility under s. 80 or the *Crimes Act*, s. 309 (1) (a) (Assessment whether emergency detention required), the person in charge of the facility must detain the person at the facility.

**Alert:** If the person is brought under s. 80 of the Act, the person is detained under s. 81.

If there is a reason to believe that the person has certain items that can compromise the safety of themselves and others, the person may be searched and have those items removed.

When detained the person in charge of the facility must ensure the person receives appropriate care. Any use of confinement or restraint must be kept to a reasonable minimum to prevent the person from causing harm to themselves or someone else and to ensure that they remain in the treatment facility (s. 81).

### Initial examination following detention

If a person is held involuntarily at an approved mental health facility, the person in charge of the facility must ensure that within four hours of arrival, the person is assessed and examined. The examination is conducted by a Consultant Psychiatrist, Psychiatric Registrar with consultation from a Psychiatrist, or another doctor with consultation from a Psychiatrist (s. 84(2)). The assessment must include a psychiatric assessment and may include a physical examination.

The examination must occur in person and must consider the observations arising from the examination and any other relevant and reliable information about the person’s condition, e.g. collateral information provided from carers, family, etc.

Box 4: Detention of a person **at an** approved mental health facility

Under s. 81 (2) of the Act, if a doctor or mental health officer believes on reasonable grounds that a person attending an approved mental health facility (voluntarily or otherwise) is a person to whom Box 2 (on the previous page) applies, the doctor or mental health officer may detain the person at the facility.

The purpose of the initial examination is to ensure that there is an assessment of the persons’ mental state and identification of immediate physical health issues requiring

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attention which could be contributing to the person's mental health presentation.

The results of this initial examination should inform the decision about whether the person requires involuntary detention.

### Failure to undertake an initial examination

If an initial examination is not conducted within four hours, the person in charge of the facility must advise the responsible consultant psychiatrist (as delegate of the Chief Psychiatrist) and Public Advocate (s. 84(4)(a)).

The Chief Psychiatrist must then arrange an examination of the person as soon as possible and within two hours of being told of the failure to conduct the initial examination within the usual timeframe (s. 84(4)(b)).

If the person is not given an examination within the further two hours, the person in charge of the facility must:

- discharge the person, or
- release the person into the custody of ACT Policing, if the person is subject to an order under s. 309 of the Crimes Act 1900, or
- release the person into the custody of ACT Corrective Services, if the person is a detainee at an adult correctional centre, or a Bimberi Youth Justice Centre youth worker, if the person is a young detainee at a detention place, and
- advise the Public Advocate of the failure to conduct the assessment (ss. 84(5)(6)).

## Involuntary detention

### Authorisation of three-day detention (ED3)

Following the initial examination, the doctor who has carried out the examination may be concerned that the person presenting is

unwell and in need of immediate treatment, care and support. A three-day detention (ED3) may be recommended if the doctor is satisfied that:

- i. the person requires immediate treatment, care or support, and
- ii. the person has refused to receive that treatment, care or support, and
- iii. involuntary admission is necessary for the person's own health or safety, social or financial wellbeing, or for the protection of others, and
- iv. adequate treatment, care or support cannot be provided in a less restrictive environment.

The affected person may agree with this, and they can be offered that treatment, care and support in a voluntary capacity.

However, if the person disagrees and refuses treatment, care or support, another doctor must examine the person and, based on that examination and any other information the doctor is given, also must have reasonable grounds for believing the matters mentioned in paragraph i to iv (above).

This forms the basis for three-day detention (ED3).

### Documentation for involuntary detention

If the person is held involuntarily, the authorising doctor must complete an Emergency Order 3 Days Form (ED3) form. This is to be forwarded to the Tribunal Liaison Officer (TLO), who will advise the relevant people involved in the person's care of the person's detention.

### Revoking Emergency Detention

Consistent with the principles of least restrictive care, if the person's condition improves to the point that they no longer

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require involuntary detention and treatment, care or support (s. 85); or they agree to receive treatment, care and support voluntarily, the ED3 must be cancelled. An ED3 is cancelled using the Release from Involuntary Detention Form. If the ED3 is cancelled, the person is discharged or treated as a voluntary patient.

**Alert:** Under the Act, if a person no longer meets the criteria for involuntary detention and is not discharged from involuntary care, the person in charge of the facility must ensure that the person is discharged immediately. Failure to do so is an offence (maximum penalty of 50 penalty units, six months in prison or both) (see s. 133 of the Legislation Act 2010 for current penalty costs for an individual and a corporation).

### Application to extend the period of detention (ED11)

If the person remains unwell and continues to meet the criteria for detention (s. 85), the Chief Psychiatrist (or delegate) may apply to ACAT for an order for a further period of involuntary detention of up to 11 days (known as an ED11) (s. 85(2)).

To transfer someone from an ED3 to an ED 11, the treating psychiatrist must apply to the ACAT for an extension of involuntary care. They must complete the Application for a further period of detection – not exceeding 11 days (ED 11). The form must be forwarded to the TLO, who liaises with the ACAT to arrange for the President of the Tribunal to decide to grant or refuse the application. A formal hearing is not held.

If the ACAT grants the extension of detention, the person must be advised and treatment, care and support continued. If the ACAT does not grant the extension the person must be discharged from involuntary care. They can be treated as a voluntary patient if they agree to ongoing care. If they do not agree, they must be discharged immediately from involuntary care.

**Alert:** The principles of the least restrictive care must always be upheld i.e. an ED 11 would only be applied for if the person is unwilling to receive treatment, care and support.

## Right to review

All people receiving involuntary care under the Act must be advised of their rights under the Act. This includes their right to apply to the ACAT for a review of their Emergency Detention (s. 85 (4)). This right may be exercised via access to the Public Advocate, the person's legal representative, or by the person preparing their own application to ACAT.

If a person applies for an ACAT review, the ACAT must conduct the review of the emergency detention within two days of the application. They may do this without a hearing. ACAT may decide to uphold the emergency detention period, vary it (e.g. shorten the maximum duration) or order that the person be discharged from emergency detention (s. 84(5)).

# Medical examinations

## Psychiatric

A comprehensive psychiatric examination should include the following systems and areas:

- taking a comprehensive history of relevant issues
- risk assessment, including risk of suicidality
- cognitive tests appropriate to the person's presentation
- collecting and other relevant information, e.g. collateral information from carers, and

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- a Mental State Examination (MSE).

## Physical

A comprehensive physical assessment should include the following systems and areas:

- comprehensive physical health history and review including use of tobacco, alcohol and any other substances.
- general observations, including pulse, temperature, blood pressure, height, weight.
- review of all major organ systems and other relevant systems as indicated by the person's history.

## Initial examination following detention at an approved mental health facility (Section 81)

*This 'initial examination' must be conducted by a 'relevant doctor'*

*Initial examination means:*

- examining the subject person in person
- considering the observations arising from the examination
- considering any other reliable and relevant information about the subject person's condition.

**Relevant doctor**, of an approved mental health facility, means a person employed at the facility as a consultant psychiatrist, a psychiatric registrar in consultation with a consultant psychiatrist or another doctor in consultation with a consultant psychiatrist.

## Examination following ED3

Within 24 hours of initiation of ED3, a person detained at the facility must have

- a thorough physical health examination by a doctor (s. 86).
- a thorough psychiatric examination by a person employed at the facility as a consultant psychiatrist, a psychiatric registrar in consultation with a consultant psychiatrist or another doctor in consultation with a consultant psychiatrist.

This examination must not be conducted by a doctor who conducted the initial examination of the person under section 84. However, a thorough examination mentioned above (physical and psychiatric) is not required if the chief psychiatrist is satisfied on reasonable grounds that:

- a doctor or psychiatrist recently gave the person such an examination
- the examination provides sufficient relevant information about the current physical or psychiatric condition of the person.

If the person refuses an examination, the reasons for the refusal must be documented in the person's clinical record. Efforts to continue seeking the person's consent to a comprehensive examination must continue.

## Notification of involuntary care

Communication with family and carers is an integral aspect of good health care. Consistent with recovery-based care and the principles of the Act, the following people (if they are involved in the person's care) must be

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notified, of the person's involuntary care within 12 hours of initiation of ED3 (s. 89):

- The Public Advocate
- ACAT
- If the person is a child, each person with parental responsibilities under the Children and Young People Act 2008
- The Guardian
- The Attorney
- Nominated Person
- The Health Attorney.

Failure to notify the above people of a person's detention within 12 hours is an offence (maximum penalty of five penalty units) (see s. 133 of the *Legislation Act 2010* for current penalty costs for an individual and a corporation).

**Alert:** Under the Act, the doctor or mental health officer who detained the person must undertake the notification of the above people. However, in practice this is delegated to the TLO.