

The Differing Profiles of Mental Health Legislation in the Australian Capital Territory (ACT) and England and Wales (E&W) and Impacts on Involuntary Hospitalisation Rates and Duration



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Introduction



- Evidence Gap: Mental health legislation evolves and varies between legislatures with differing impacts on patient rights and involuntary treatment outcomes.
- Limited comparative research exists examining how these specific legislative differences translate to real-world outcomes for patients and healthcare systems.
- In the Australian Capital Territory (ACT) : The England and Wales MHA was initially followed up to the 1959 Act and then ACT went it's own way.



Introduction



- ACT-Currently Mental Health Act (MHA) 2015.
- In England and Wales (E&W) : Mental Health Act (MHA) 1983 (as amended in 2007).



Australian Capital Territory (ACT)

- The Australian Capital Territory (ACT) includes Canberra, the national capital, and the surrounding land.
- The entire territory is an enclave within the state of New South Wales.
- The ACT is administratively divided into 21 districts, including Canberra Central ,Belconnen , Gungahlin and Tuggeranong.

Comparative value

- Both systems operate within Commonwealth legal frameworks but have evolved differently, providing natural "policy experiments."
- Similar cultural contexts with different implementation approaches allow for meaningful outcome comparisons.

AIMS

- To describe and compare ACT and England & Wales MHAs, examining comparative rates of involuntary treatment orders and tribunal oversight to inform evidence-based policy reform.

Methods

- A comparative legislative analysis of both Acts was undertaken.



- Datasets from the Office for National Statistics (E&W) and ACT Health Services used to evaluate resulting involuntary admission rates, mean detention duration, and tribunal review frequency.

Definition of mental disorder

- In the context of the MHA 1983 in England and Wales, the definition of mental disorder is broad ("any disorder or disability of the mind") and encompasses a wide range of conditions.
- In contrast, the ACT distinguishes between mental illness (requiring clinically significant disturbance) and mental disorder (including dementia and intellectual disability) but does not explicitly refer to personality disorders.

Detention orders

- The England and Wales system separates inpatient treatment (Section 3, lasting 6 months) from community supervision (Community Treatment Order).
- Whereas the ACT's Psychiatric Treatment Order (PTO) integrates both hospital and community settings under a single authority, applies to people with mental illness and/or mental disorder, and initially lasts for 6 months.

Detention orders cont.

- Both Magistrate's and Crown Courts in ACT can request ACAT (Mental Health Tribunal) for an assessment of fitness to enter a plea, whether they might not be guilty by reason of mental impairment and if the defendant has a mental illness.
- This contrasts with E&W, where these determinations are exclusively within the criminal court system's jurisdiction, reflecting a fundamental difference in how the mental health and judicial systems interact.

Consent to treatment

- ACAT can authorise medication and ECT being given to a non-consenting detained patient.



- In E&W, this role is undertaken by a Second Opinion Appointed Doctor (SOAD).

Results – Rights Protection

Metric	ACT	England & Wales
<i>Legal representation at tribunals</i>	80%	72%
<i>Advanced decisions/directives honoured</i>	70%	65%
<i>Independent advocates provided</i>	61%	88%

Reduced unnecessary detention

Metric	ACT	England & Wales
<i>Average Length of Detention</i>	<i>21-35 days</i>	<i>30-45 days</i>
<i>Discharge rate at tribunal hearing</i>	<i>14-18%</i>	<i>9-12%</i>
<i>Re-admission rate within 30 days</i>	<i>19%</i>	<i>24%</i>
<i>Comparative study by Light et al. (2023) published in the International Journal of Mental Health Systems, which analysed detention data across jurisdictions from 2018-2022.</i>		For Forensic Sections (37/41), the average length is substantially longer, often measured in years rather than days.

Culturally appropriate care

Metric	ACT	England & Wales
Indigenous representation on tribunals	65% of regions	40% ethnic minorities
Cultural assessment tools used	82% for Indigenous patients	Not specified
Access to cultural healers	58% of facilities	Not specified

Culturally appropriate care

Metric	ACT	England & Wales
Cultural competency training	Not specified	76%
Culturally specific advocates available	Not specified	42% of regions
Disparity in detention rates	2 x higher for indigenous patients	4× higher for Afro-Caribbean patients

England & Wales challenges

- **England & Wales challenges:**
- Detention rates for Black British people rose to 321.7 per 100,000 population.
- Mental health detentions are three times higher in the most deprived areas.
- The racial gap is widening rather than improving.
- Larger absolute numbers due to population size create greater system strain.

ACT advantages

- Lower disparity ratios suggest better systemic equity.
- Unified service delivery may reduce discrimination points.
- More frequent tribunal oversight appears to catch biased decisions earlier.
- Integrated hospital-community model creates fewer barriers.

Policy Implications

- The **disparity comparison** is particularly significant because it demonstrates that system design choices can substantially impact racial equity.

Why ACT Shows Better Equity:

Systematic Oversight:

Frequent tribunal reviews may actively reduce discriminatory detentions.

Simplified treatment pathways create fewer opportunities for bias.

Smaller, integrated systems can maintain better cultural competency and unified treatment orders reduce system complexity that can disadvantage minorities.



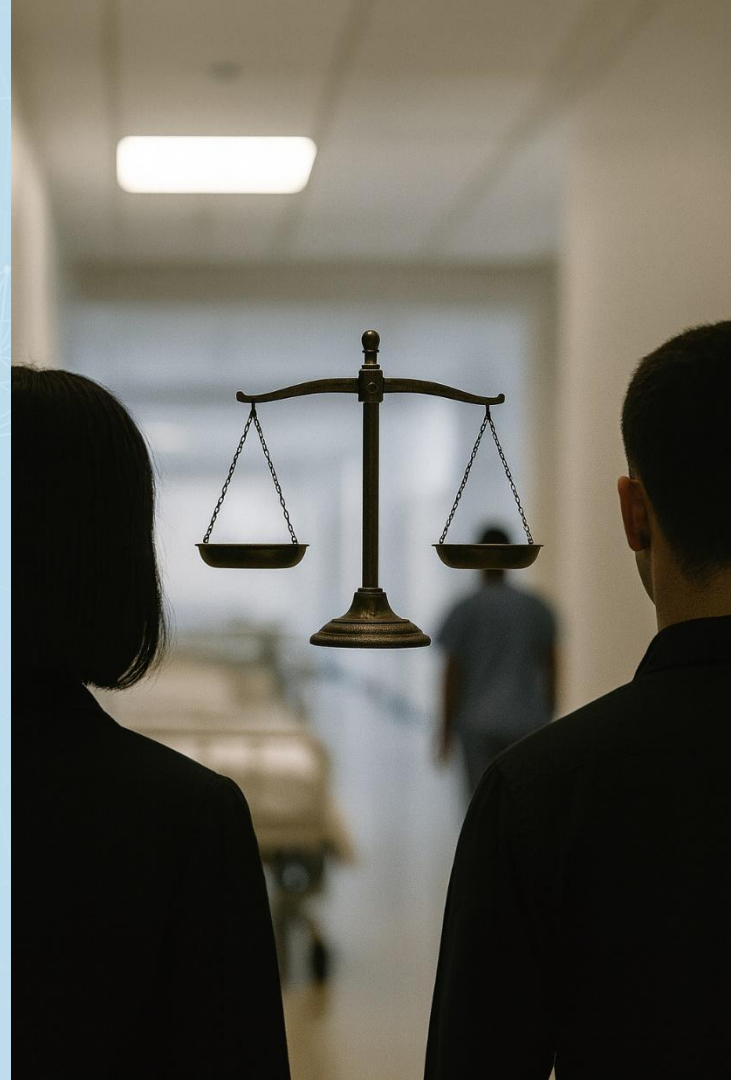
- **Legal Framework:** Narrower definition of mental disorder may reduce subjective decision-making.

So, the ACT model offers a more equitable approach without compromising public safety - a crucial finding for mental health law reform discussions.

Demographic Patterns

Gender Differences:

- England & Wales: Females more likely to experience repeated detentions (19% vs 16% for males).
- ACT: Similar patterns but with shorter overall detention periods.



Recovery focus

Metric	ACT	England & Wales System
Recovery framework implementation	76% of services	Not specified
Peer support worker involvement	82%	43%
Patient-defined goals in treatment plans	74%	51%
Personal recovery measures tracked	68%	Not specified
Recovery plans in treatment orders	Not specified	68%

Tribunal Reviews

- Annual involuntary hospitalisation rates were comparable (E&W: 0.087%, ACT: 0.075%).
- Patients in ACT also experience significantly shorter wait times for hearings (3-4 weeks vs. 4-8 weeks).
- Compared to E&W, the ACT had significantly more tribunal reviews per detained patient ($p < 0.0001$) according to the Tribunal Statistical Report 2023, demonstrating higher scrutiny and potentially contributing to shorter detention periods.



A practical roadmap for reform

- This empirical comparative approach creates a practical roadmap for reform, allowing policymakers to implement evidence-based practices that protect rights while maintaining appropriate care standards.
- These comparisons are particularly significant as England and Wales are currently in the process of revising their Mental Health Act.
- The proposed reforms, expected to be implemented over the next few years, aim to modernise the legislation with a stronger focus on patient autonomy.

A practical roadmap for reform

Each system has strengths to contribute:

- The ACT could benefit from adopting E&W's more comprehensive Independent Mental Health Advocate (IMHA) programme, which reaches 88% of detained patients compared to ACT's estimated 61% coverage, potentially improving rights protection and the patient's voice in tribunal proceedings.
- Conversely, the ACT's approaches to frequent Tribunal reviews, shorter detentions and community treatment alternatives offer valuable insights that could inform the new England and Wales legislation.

Differences between the legislations

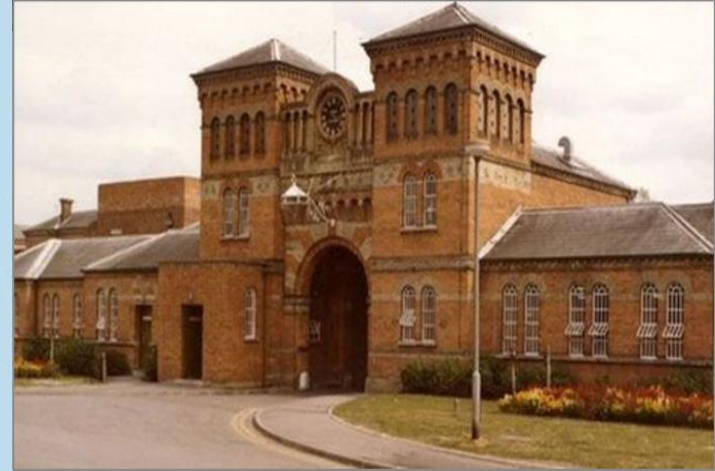
- ACT's integrated hospital-community treatment orders offer more flexible care delivery.
- But ACT's shorter detention durations may reflect both its MHA and lesser provision of forensic and secure services than E&W.



Number of High Secure Forensic Hospitals

England and Wales:

- England and Wales operates 3 high-secure hospitals compared to the ACT having no high-secure facilities.
- These provide just over 700 beds. ([Long-stay in forensic-psychiatric care in the UK – PMC-Duke et al, 2018.](#))
- The three hospitals are Ashworth, Broadmoor, and Rampton.



Number of High Secure Forensic Hospitals

Australian Capital Territory:
Has no high secure forensic hospitals.

ACT residents requiring high secure care are transferred to NSW's Forensic Hospital.



Number of Medium Secure Units

England and Wales:

- Has approximately 60+ medium secure units.
- Provides around 3,500 medium secure beds. (*Long-stay in forensic-psychiatric care in the UK – PMC-Duke et al, 2018.*)
- Mix of NHS-run and independent provider facilities.



Number of Medium Secure Hospitals

Australian Capital Territory:
Has one medium-secure unit
(Dhulwa).

Medium secure care is also accessed
through NSW system.



Number of Low Secure Units

1. England and Wales:

- Multiple low secure forensic units- 200+ low secure facilities nationwide.
- Services distributed across various NHS trusts, private and independent hospitals.

2. Australian Capital Territory:

- Has limited low secure options within its forensic mental health system.
- Low secure care managed through NSW Health System.

Key Strengths

- The key **strengths** of our study include its novel empirical approach, practical policy relevance, and robust statistical analysis.
- Although the results show that the ACT achieves better outcomes with more frequent tribunal reviews and shorter detentions, we have established the better ACT outcomes result both from legislative differences and other factors.
- The finding that this doesn't compromise public safety is particularly significant.

Weaknesses

- **Limited Geographic Scope:**
ACT represents only one Australian jurisdiction with unique characteristics.
- **Population Differences:**
ACT's smaller, more urbanised population may not reflect broader Australian experience.

Weaknesses cont.

- **Healthcare System Variations:**

Different funding models and service structures may confound results.

- **Cultural Context:**

Limited exploration of how cultural attitudes toward mental health affect outcomes. Need multivariate analysis controlling for system resources, population characteristics, and service models.

- **Priority : Patient Voice**

Future research needs to include direct patient experiences and satisfaction measures.

Differences

There are differences between the legislations in the definition of mental disorder and a much greater role for the ACAT in ACT, including in authorising psychiatric treatment, community treatment orders and ECT.



Impact

- Comparative analysis indicates that each legislation can inform reform of the other and provide frameworks for its services, particularly around tribunal powers and treatment order flexibility.
- However, service improvements require both legislative frameworks and adequate resourcing to effectively support patient care.



Proposals in Draft Mental Health Bill for England and Wales

Reclassifying definition of mental disorder so that Learning Disability and Autism alone are no longer grounds for detention in civil (as opposed to criminal) part of Act.

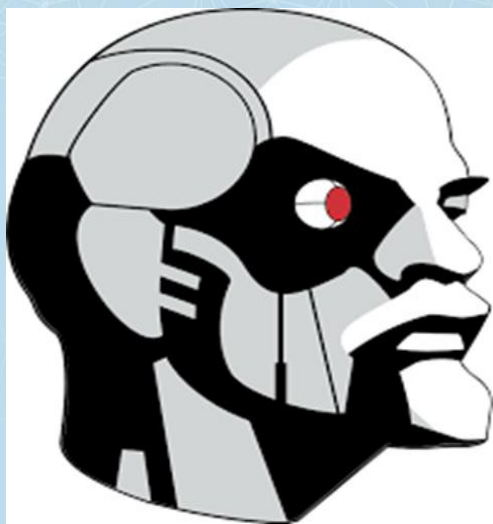
Raising threshold of criteria for detention to include 'serious harm may be caused to health and safety of patient or of another person'.

Raise threshold of criteria for Community Treatment Order.

Treatment must provide a therapeutic benefit.

Proposals in Draft Mental Health Bill for England & Wales

- Shortening period before automatic referral to Mental Health Tribunal, which also will have power to recommend to social services to make plans for aftercare services.
- Placing care and treatment plans on a statutory basis for detained patients.
- Statutory 28-day time limit for individuals with severe mental health who need to be transferred from prison to hospital under the MHA.
- Removal of police stations and prisons as 'Place of Safety' under MHA.
- Extension of advocacy IMHA to voluntary patients in England (already in Wales).
- Statutory Advance Choice Documents.



Thank you

