

# A summary

## *Severe Substance Dependence Treatment Act 2010*

### Key messages

The *Severe Substance Dependence Treatment Act* (the Act) allows a person with a severe substance dependence to be lawfully detained and treated for a maximum of 14 days.

The Act only applies to people with the most severe substance dependence who are incapable of making decisions about their own health, do not want to undergo voluntary treatment and are risking their life or causing serious damage to their health. Detention and treatment must always be an option of last resort.

The purpose of the Act is to give the person access to medically-assisted withdrawal, providing time to recover, enhance their capacity to make decisions about their substance use, and the opportunity to engage in voluntary treatment once the order ceases.

### Introduction

The Act allows for a period of detention and compulsory treatment for those people who have severe substance dependence. Detention and treatment under this Act can only be for a maximum of 14 days and is reserved for those requiring urgent treatment to save their lives or prevent serious damage to their health. The person must be incapable of making decisions about their substance use and personal health and welfare. Only a small number of people will satisfy the criteria to be detained and treated under the Act.

The Act came into effect in Victoria on 1 March 2011. It repealed and replaced the *Alcoholics and Drug-dependent Persons Act 1968*.

### Summary of the Act

#### The process

For a person to be detained and treated, a detention and treatment order must be made by the Magistrates' Court.

The person making the initial application, who must be aged over 18, must complete an *Application for a detention and treatment order* form.

This form must be accompanied by a *Recommendation for a detention and treatment order* form which should be completed by a prescribed registered medical practitioner. The *Recommendation for a detention and treatment order* provides the clinical evidence that the Magistrate's Court needs to satisfy the criteria for detention and treatment.

Both forms should be completed and lodged at the Magistrates' Court closest to where the person for whom the application has been made lives.

The applicant must then provide a copy of the application (and all supporting documents) to the person named in the application within 24 hours. The applicant must also provide copies of the application to the senior clinician of the treatment centre where it is proposed to detain the person and the person's guardian (if they have one).

The Court must list the application for hearing within 72 hours of the application being lodged. The person for whom the application has been made has the right to attend the court and have legal representation. At the hearing, the applicant must satisfy the court that each of the criteria for detention and treatment apply. The Magistrate will decide the application based on the available evidence.

If the Court makes a detention and treatment order, the applicant must make the necessary arrangements (in consultation with the treatment centre) for the person named in the application to be taken and admitted to the treatment centre.

When the person for who the order has been made arrives at the treatment centre, they will be admitted and given treatment for their severe alcohol or drug dependence. Within the first 24 hours the senior clinician of the treatment centre must examine the person to decide whether all the criteria for detention and treatment continue to apply. If the senior clinician believes that all of the criteria apply to the person, they

must confirm the order. If the senior clinician finds that one or more of the criteria do not apply, they must discharge the person from the order.

The Act provides for compulsory treatment of the person's substance dependence. Compulsory treatment is limited to anything done in the course of the exercise of professional skills, to provide medically assisted withdrawal from severe substance dependence, or to lessen the ill effects, or the pain and suffering of the withdrawal. The senior clinician will develop a treatment plan in consultation with the person, their nominated person and the guardian (if they have one). The person has the right to obtain a second medical opinion at any time about the treatment provided and whether the criteria still apply

## Criteria

There are strict criteria that must be fulfilled to be detained under the Act.

- The person who the order has been made for must have a severe substance dependence, meaning that:
  - they must have a tolerance to a substance
  - they must show withdrawal symptoms when they stop or reduce their substance use
  - they must be incapable of making a decision about their substance use, personal health, welfare and safety.
- The person for whom the order has been made must require immediate treatment as matter of urgency to save their life or prevent serious damage to their health.
- The treatment can only be provided to the person who the order has been made for, through the admission and treatment in a treatment centre.
- There is no less restrictive means reasonably available to ensure treatment is received.

## The prescribed registered medical practitioner

The prescribed registered medical practitioner plays a crucial role in this process. The role of the prescribed registered medical practitioner is to provide a clinical assessment as to whether or not all of the criteria for detention and treatment (the criteria) apply to the person by examining the person.

The *Severe Substance Dependence Treatment Regulations 2011* define a prescribed registered medical practitioner as:

- a person who is a fellow or affiliate of the Royal Australian and New Zealand College of Psychiatrists (psychiatrists)
- a person who is a fellow of the Australasian Chapter of Addiction Medicine (addiction medicine specialists)
- in relation to a person in custody at facilities operated by Victoria Police, a registered medical practitioner who, in the course of work for Victoria Police, is providing medical care to that person at that facilities (custodial medical officers).

Before examination, the practitioner should explain the purpose of the exam and answer any questions the person may have. Following the examination, if the practitioner is satisfied that all the criteria apply, they must then consult with the senior clinician of the treatment centre before making a recommendation. The senior clinician is an Addiction Medicine Specialist. If following the consultation with the senior clinician the practitioner is satisfied that all the criteria apply to the person, they may complete a recommendation.

## Safeguards

The Act includes a number of important safeguards when a person is admitted to the treatment centre. They must be given a statement of rights and entitlements under the Act. This will also be explained to them. They have the option to seek legal advice and obtain a second opinion.

The person can also nominate someone to protect their interests while they are in the treatment centre (the Nominated Person). The Nominated Person is usually a friend, carer, case worker or family member and will be consulted about the treatment and discharge of the person.

## Discharge

The detention and treatment order ends when it expires after 14 days or if it is discharged by the senior clinician. The person also has the right to apply at any time to the Magistrates' Court for the order to be revoked. The person will have a discharge plan prepared for them and will be linked with further support. Following discharge from the detention and treatment order the person will be encouraged to continue treatment in a voluntary capacity.

## Further information

For further information about the Severe Substance Dependence Treatment Act, visit <https://www2.health.vic.gov.au/alcohol-and-drugs/aod-policy-research-legislation/aod-legislation/severe-substance-treatment-act-ssdta>.

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