

11 January 2017

Leanne Linard MP  
Chair  
Health, Communities, Disability Services and Domestic and Family Violence Prevention  
Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

By email: [hcdfsdfvpc@parliament.qld.gov.au](mailto:hcdfsdfvpc@parliament.qld.gov.au)

Dear Ms Linard

**Re: Submission to Mental Health Amendment Bill 2016**

The Queensland Branch of the Royal Australian and New Zealand College of Psychiatrists (QLD Branch) welcomes the opportunity to respond to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee on the Mental Health Amendment Bill 2016 (the Bill).

The QLD Branch supports the majority of the amendments in the Bill as they allow for operational improvements and enhanced patient confidentiality, and considers it is advantageous that the amendments have been put forward before the *Mental Health Act 2016* (the Act) commences in March 2017.

*Clause 15: Admissibility of statements made during assessment or examination*

The inclusion of clause 15 of the Bill provides for improved patient confidentiality and protection by stipulating that oral or written statements made by a person during a court-ordered psychiatric assessment or examination are not admissible as evidence against the person in any criminal or civil proceeding. Currently, section 180 of the Act allows statements made by a person during a mental health assessment or examination to be admitted in evidence against the interests of the person, whereby they may be advised by their legal counsel not to engage in an assessment or examination, and may deter the person from being honest. This would compromise the assessment or examination process, to the person's detriment.

The amendment respects patient confidentiality and encourages engagement with mental health professionals, allowing for best practice psychiatric diagnosis in line with the Royal Australian and New Zealand College of Psychiatrists' [Code of Ethics](#) (2010) and position statement on confidentiality, '[Patient-psychiatrist confidentiality: the issue of subpoenas](#)' (2016).

As per the Bill's Explanatory Notes the amendment is in line with mental health legislation in other states and territories, and in comparison provides further protection of a person's

confidentiality. For instance, New South Wales and South Australia's legislation allows for statements made during assessment or examination to be admitted into evidence and only limit the ability of the judge or magistrate to consider the evidence, while all other Australian States and Territories prevent statements to be considered in criminal proceedings only.

*Clauses 3, 4 and 8: Time periods for detaining persons under examination, assessment or review*

The QLD Branch is concerned that clause 3 of the Bill specifies prescriptive time frames whereby a person may be detained for the purposes of an examination by an authorised doctor or authorised mental health practitioner at an authorised mental health service (AMHS) or public sector health services facility (PSHSF) and a non-AMHS or non-PSHSF. The clause does not take into account the difficulties experienced in rural and remote areas of Queensland where there is restricted access to health services and authorised doctors or authorised mental health practitioners, due to the lack of resources in these areas.

Similarly, clause 4 specifies a maximum 24-hour period for a person to be detained for a mental health assessment at an AMHS or PSHSF, and clause 8 states a maximum 6-hour period for a person to be detained at an AMHS or PSHSF for a treatment authority review.

The QLD Branch is concerned that mental health services in rural and remote areas will be unable to comply with clauses 3, 4 and 8 which do not consider the restricted access to and limited number of services and authorised doctors or authorised mental health practitioners in these areas, and overall considers this could jeopardise their ability to comply with the Act.

Section 32(2c) of the Act which is to be amended by clause 3 currently provides the ability for the person to be detained for examination for the 'period reasonably necessary for the examination', and is a more feasible requirement for services in rural and remote locations.

The QLD Branch recommends that clauses 3, 4 and 8 of the Bill be omitted or amended to only apply to locations in Queensland where access to services and authorised practitioners provide for feasible compliance with these clauses.

*Clause 26: Delegation of powers for administrators*

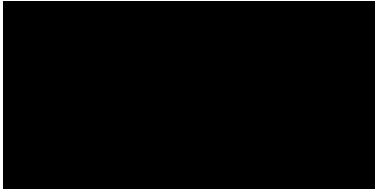
Clause 26 of the Bill provides that the administrator of an AMHS may delegate their functions under the Act to an appropriately qualified employee, either an appropriately qualified health service employee of a public AMHS or an appropriately qualified employee of a private AMHS. The QLD Branch is concerned that there is no stipulation for the delegation process to be formalised before delegation is to occur, so as to legitimise the delegation and ensure it is not ad hoc.

The QLD Branch recommends that clause 26 should include the stipulation that a formal delegation process is to occur before an employee is delegated as the administrator.

In closing, the Bill's Explanatory Notes state that the costs to government associated with the implementation of the Bill will be met from existing budget allocations. The QLD Branch would like to highlight that these costs should be attributed to the existing budget allocation for the implementation of the Act and not be passed on to the mental health services.

To discuss any of the matters raised in this letter please do not hesitate to contact the QLD Branch Policy Officer, [REDACTED]

Yours sincerely



Dr Agnew Alexander  
**Chair, RANZCP QLD Branch**

### **References**

Royal Australian and New Zealand College of Psychiatrists (2010) *Code of Ethics*. Melbourne, Australia: RANZCP.

Royal Australian and New Zealand College of Psychiatrists (2016) *Position Statement 89: Patient–psychiatrist confidentiality: the issue of subpoenas*. Melbourne, Australia: RANZCP.