

Your Ref:
Our Ref: AR:cm
Date: 16 January 2017

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The Inquiry Secretary
Health, Communities, Disability Services and Domestic Violence Prevention Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Secretary

Mental Health Amendment Bill 2016

Thank you for providing Legal Aid Queensland with opportunity to comment on the Mental Health Amendment Bill 2016.

Legal Aid Queensland supports the amendments to the *Mental Health Act 2016* (MHA) contained in the Bill, however we have concerns about the drafting of the proposed new sections 180, 180A and 180B.

The proposed new section 180 of the MHA is inconsistent with the proposed section 180A. The new section 180 would allow the admission of examination reports at sentence. However, the proposed section 180A(1) provides that statements made by a person during an examination are inadmissible in any civil or criminal proceeding. This would preclude the admission at sentence of reports containing statements made to the report writer in the course of the examination.

There will be occasions where the admission of a report or statement at sentence will be detrimental to an offender. However, there will also be occasions where it is important that information in reports, or statements made by an offender, are placed before the court at sentence, for example, where the person's mental health contributed to their offending but falls short of a defence of unsoundness of mind. If the report is not admitted into evidence in such matters, or the report is admitted with references to the statements excised, the court will not have the benefit of relevant information which may result in an unjust outcome. Given that the legislative changes have created what is effectively an 'opt in' system, we submit that the evidence should be admissible if the accused person consents to its admission.

Also, we note that the proposed section 180A(3)(b) provides that the proposed section 180A(1) would not apply to offences relating to the administration of justice under Chapter 16 of the Criminal Code. We submit the proposed section 180A(1) should only apply to the following chapter 16 offences, namely perjury (section 123), perjury (contradictory statements) (section 123A), fabricating evidence (section 126), deceiving witnesses (section 128) and attempting to pervert the course of justice (section 140). Other chapter 16 offences such as retaliation against a witness are offences which should be afforded the protection of s180A.

We have included a suggested draft section new 180 which we submit would resolve the above issues, without the need for sections 180A and 180B:

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180 Particular evidence not admissible

(1) The following is not admissible in evidence against the person in any civil or criminal proceedings

(a) an examination report.

(b) a statement made by the person during an examination of the person under an examination order;

(c) a statement made by the person to a health practitioner for the purpose of a Magistrates Court making a decision about the person under section 172 or 173.

(2) Subsection (1) applies to statements made orally or in writing and whether on oath or otherwise.

(3) However, subsection (1) does not apply to a proceeding —

(a) for contempt of the Court; or

(b) with respect to the following chapter 16 offences against the Criminal Code, sections 123, 123A, 126, 128, 140.

(c) for deciding whether to make another examination order for the person with respect to other offending.

(d) in circumstances where the accused person, or respondent to civil proceedings consents to the admission of the statement or report.

If you have any further inquiries regarding this matter, please contact [REDACTED]
[REDACTED]

Yours sincerely
[REDACTED]

Anthony Reilly
Chief Executive Officer
Legal Aid Queensland