

# Office of the Public Advocate

16 January 2017

Inquiry Secretary  
Health, Communities, Disability Services, and Domestic and Family Violence Prevention Committee  
Parliament House  
George Street  
Brisbane Qld 4000  
Via email to: [hcdsdfvpc@parliament.qld.gov.au](mailto:hcdsdfvpc@parliament.qld.gov.au)

To whom it may concern,

Thank you for the opportunity to provide feedback regarding the *Mental Health Amendment Bill 2016* (the Bill).

The role of the Public Advocate was established by the *Guardianship and Administration Act 2000* to undertake systems advocacy on behalf of adults with impaired decision-making capacity in Queensland.<sup>1</sup> The primary role of the Public Advocate is to promote and protect the rights and interests of Queensland adults with impaired decision-making capacity, particularly their right to maximum participation in decisions affecting their lives.

Since the review of the *Mental Health Act 2000* commenced in 2013, the Office of the Public Advocate has been closely engaged in the review process. This engagement has included working with the Australian Centre for Health Law Research and the Queensland Mental Health Commission to explore a human rights approach to mental health legislation<sup>2</sup> as well as holding a Roundtable with legal professionals and statutory officers who work with the *Mental Health Act 2000* to discuss the new legislation.<sup>3</sup>

The Public Advocate has made submissions throughout the process of the introduction and implementation of the new *Mental Health Act 2016* (the Act), and will continue to ensure that the rights of people subject to this Act are promoted and protected.

## ***Mental Health Amendment Bill 2016***

I am supportive of the continuing efforts in reviewing the Act so that it properly reflects the functions of the health system and to ensure that people who are subject to this legislation are treated in a fair and just way.

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<sup>1</sup> *Guardianship and Administration Act 2000* (Qld) ch 9.

<sup>2</sup> The Public Advocate joined with the Australian Centre for Health Law Research and the Queensland Mental Health Commission to invite Dr Freckleton QC to give a public lecture on a human rights approach to mental health regulation in May 2014. Dr Freckleton is a Queen's Counsel and member of both the Victorian and Tasmanian Bars. He is also a Professorial Fellow of Law & Psychiatry at the University of Melbourne, an Adjunct Professor of Law at Monash University, and a member of both the Mental Health Review Board of Victoria and the Psychosurgery Review Board of Victoria. He is an elected Fellow of the Australian Academy of Law, the Australian Academy of Social Sciences and the Australasian College of Legal Medicine, the editor of the *Journal of Law and Medicine*, and the Editor-in-Chief of *Psychiatry, Psychology and Law*.

<sup>3</sup> This Roundtable included representation from the Office of the Adult Guardian; the Director of Mental Health; the Office of the Director Forensic Disability; the Office of the Director of Public Prosecutions; Legal Aid Queensland; Crown Law; the Anti-Discrimination Commission; Department of Health; Queensland Advocacy Incorporated and Queensland Public Interest Law Clearing House Incorporated (QPILCH).

However, there is one particular clause in the Bill that is of some concern, specifically clause 6 amending section 50 of the Act. The effect of clause 6 is to remove the requirement in section 50 that information about “the nature and extent of the treatment and care” to be provided to a person under a treatment authority is to be recorded in the treatment authority itself. The purported justification for this change is that this information is required to be recorded in the patient’s health records and there is no additional benefit in requiring this information to be duplicated in the patient’s treatment authority.

In my view, the argument that there is no benefit in requiring the information to be in the patient’s treatment authority is incorrect. Under the Act, a copy of the treatment authority is required to be given to the person, and also to be given to the person’s nominated support persons, guardians or attorneys when requested.<sup>4</sup> Therefore, having the person’s treatment and care documented on the treatment authority allows the person and their supporters to be properly informed of what the treatment and care will entail and make proper objections if necessary through the Mental Health Review Tribunal. If this information is only recorded on health records, it gives rise to issues about patients being able to readily access information about the nature and extent of their treatment. This is especially an issue when the patient or their supporters want to seek further advice before the first review of a treatment authority.<sup>5</sup>

For a patient who is suffering from a mental illness and is subject to involuntary treatment, as is the case under a treatment authority, having easily accessible information for them and their support people to assess the situation is consistent with their right to participate in decisions regarding their treatment and is in accordance with good medical practice. Unfortunately, my office is aware of cases where patients are given treatment that does not appear to have been developed as part of a thorough and planned treatment process and is of questionable efficacy for their condition. Our experience with ‘treatment plans’ under the current *Mental Health Act* is that they are difficult to access and the documentation of the treatment and care can be vague and imprecise. When this occurs it is difficult for the patient, their supporters or legal representatives to raise issues with the content or approach of the treatment plans, which is their right.

In the circumstances, I strongly recommend against the adoption of clause 6. In my view, the Act should be promoting the rights of the patient, rather than the convenience of the medical facility by removing requirements to ‘duplicate’ information. Placing a person on involuntary treatment is a deprivation of their right to make decisions as well as their liberty. In those circumstances there should be a strong emphasis on ensuring the process is as fair and transparent as possible so the patient can raise their objections in a timely manner when appropriate. I have significant concerns that this amendment to the Act undermines the rights of people subject to a treatment authority to be properly informed about the care and treatment to which they will be involuntarily subject. The proposed amendment to section 50 is not in keeping with the objectives of the Act.

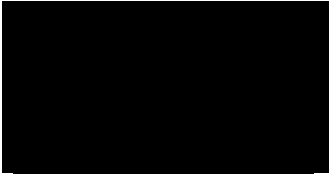
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<sup>4</sup> *Mental Health Act 2016* (Qld) s 55(2).

<sup>5</sup> Treatment authorities are reviewed within 28 days by the Mental Health Review Tribunal – *Mental Health Act 2016* (Qld) s 413(1).

Thank you again for the opportunity to provide feedback in relation to the Bill. Should the opportunity arise, I would be pleased to be part of further discussions in relation to this Bill or any other developments regarding the Act.

Yours sincerely



Mary Burgess  
**Public Advocate**  
**Office of the Public Advocate**