

Queensland Alliance for Mental Health Submission to the Health and Community Services Committee Inquiry into Queensland Mental Health Commission Bill 2012 and Amendment of Mental Health Act 2000

Please accept the following submission from Queensland Alliance for Mental Health. Queensland Alliance for Mental Health is a mental health promotion charity and a peak body, with a membership of over 250 organisations which provide services and support for people with a lived experience of mental illness and their families and friends.

The establishment of a Queensland Mental Health Commission (QMHC) is an important and exciting step along the challenging but important path to improve the lives of people who have or will experience mental illness in Queensland. Expectations in the community sector are high; there is a great appetite for reform and change. There are expectations that the QMHC will have significant influence across government to bring about compelling and bold change. It is hoped that it will be a reforming commission providing Queensland with leadership and extraordinary vision.

Queensland Alliance for Mental Health believes the QMHC can accomplish profound social change as well as build trust with community by recognising the value of lived experience in planning, decision making and action. This approach will establish partnerships that create a collective and lasting impact.

Queensland Alliance for Mental Health (QAMH) would like to see principles regarding governance incorporated into the overarching principles for the QMHC. These should include that:

- The QMHC Commissioner has lived experience as a consumer or carer;
- QMHC decision making will be transparent;
- Although responsible to the Minister, the QMHC will also be responsive to inquiries from Parliament.

Clause 11

The Act does not explicitly explain the relationship between the QMHC and the National Mental Health Commission. Part of the complexity of mental health and AOD policy and service provision in Australia reflects the federal structure of government. Federal initiatives, including Partners in Recovery and possibly the National Disability Insurance Scheme, will have a significant impact on the structure of, and funding for, service delivery over the coming years. Recommendations from A Contributing Life: the 2012 National Report Card on Mental Health and Suicide Prevention produced by the National Mental Health Commission will contribute significantly to the Queensland Mental Health Commission's first major task of preparing a whole-of-government strategic plan. Moreover, primary health care, a Commonwealth responsibility, is central to mental health and AOD policy and service provision. Given these contextual factors, Queensland Alliance for Mental Health recommends further consideration be given to including in the Bill measures that articulate how the

division of responsibilities between State and Commonwealth governments will inform the scope of activities undertaken by the QMHC.

We endorse the range of functions listed for the QMHC in the Information and Consultation Paper. In particular, we endorse the capacity for the QMHC to make public recommendations to other agencies in pursuit of achieving systemic reforms that will promote improvements in service provision and accessibility. However, Queensland Alliance for Mental Health would like to see the capacity of the QMHC to ensure the implementation of such recommendations strengthened. While it will be important for the QMHC to inspire change and work collaboratively with relevant agencies and organisations, there needs to be some capacity to sanction said agencies, where service provision fails to meet benchmarks or standards for example. Queensland Alliance for Mental Health submits that Government give further consideration. Stakeholders have consistently argued that in whatever form it takes the QMHC must have teeth.

Clause 11 (1)

With six staff and one Commissioner and no additional allocation in the current budget it is difficult to understand how the QMHC will prioritise activities from an extensive list of functions which include:

- Developing a whole of government strategic plan 11 1a
- Undertaking and commissioning research 11 1f
- Reducing stigma and discrimination 11 1j
- Assisting other agencies to implement innovative and evidence based practice 7d
- Engaging and consulting with a wide range of stakeholders 11 2d

Clause 38

In the Information and Consultation Paper there was an acknowledgment that “stakeholders may have some reservations about the Advisory Council being established as an advisory body only, rather than as a governance body”. This observation is correct. Queensland Alliance for Mental Health encouraged Government in its response to the consultation paper to give consideration to employing the model that has been developed for Hospital and Health Services (HHS) when establishing the Advisory Council. However we note that the draft Bill in section 38 states that the council’s functions are advisory only. We would like to restate that the role of the advisory council should be strengthened to that of a governance body similar to that of HHS Governing Councils. These responsibilities should include the power of appointment of senior staff including the commissioner and deputy commissioners (should it become necessary to appoint them).

Clause 47

Queensland Alliance for Mental Health welcomes the establishment of committees to assist the council in undertaking its functions. Such committees will be an important resource for the Commission. However, Queensland Alliance for Mental Health submits that Government should also give consideration to the appointment of Deputy Commissioners, from time to time, to galvanise

energies for reform around specific issues. Additionally appointing a Deputy Commissioner with specific responsibility for Alcohol and Drug (AOD) issues would function to ensure profile of AOD issues, which may have a bearing on an individual's mental health but do not necessarily, imply mental illness.

Queensland Alliance for Mental Health supports the proposal to ensure that legislation articulates principles that respect Indigenous understandings of health care and recommends that along with the composition of the Advisory Committee including Aboriginal and Torres Strait Islander people that Government give consideration to the establishment of a standing committee, located outside of Brisbane, that can provide specific review and insight from the perspective of Indigenous Queenslanders, particularly those with a lived experience.

In addition we would like to restate that there are initiatives that would support the Advisory Council and standing committees in carrying out their responsibilities that include:

- Adequately resourcing consumer and carer networks to respond to opportunities for engagement;
- Using alternative formats and technology to ensure the accessibility of consultations;
- Ensuring that relevant publications are available in multiple languages and accessible English;
- Giving consideration to employing a range of deliberative structures from focus groups, to citizen panels and citizen juries to structure opportunities for debate and participation in policy development.

Clause 37

We recommend that the Mental Health and Drug Advisory Council membership includes expertise in both mental health and alcohol and other drugs

Clause 28 and 30

Queensland Alliance for Mental Health welcomes the standard of accountability where ordinary reports are tabled in the Legislative Assembly (clause 30) and that the commission must include in its annual report details of any ministerial direction (clause 13). Queensland Alliance for Mental Health also recognises, as stated in clause 28, the need for the Minister to direct the commission to prepare special reports on significant systemic issues. However that whilst we understand that the legislation makes for provision for these special reports to be made public (presumably at the discretion of the Minister) Queensland Alliance for Mental Health wishes to confirm that in the interests of transparency the number of special reports requested by the Minister is included in the Commission's annual report.

Clause 7

The whole of government strategic plan will provide strategic guidance and direction about the intended outcomes of government funding. The role of the community managed mental health sector is significantly influenced by its relationship with government. We believe that the Bill needs to include a clause in this section that explicitly refers to the role of the QMHC in fostering the development and the strengthening of partnerships between government and the non government sector.

The Act indicates that the QMHC will not duplicate the functions of agencies which are responsible for delivering services or actively responding to complaints. However, further clarity regarding the relationship between the QMHC and the Mental Health Tribunal, the Public Advocate, the Legal Guardian, the Community Visitor Program and the Health Quality and Complaints Commission is warranted. Queensland Alliance for Mental Health submits that the QMHC should have overarching responsibility for monitoring and evaluating the activities of these agencies as they pertain to relevant consumer groups. Such a role would assist the QMHC develop strategic policy for systemic changes that further the human rights of people with a lived experience of mental illness or addiction. Queensland Alliance for Mental Health submits that this responsibility, including information sharing between said agencies, should be formalised in the legislation.

Amendment to the Act 2000

Clause 131A

The long standing clinical conviction that persons with psychopathy are both untreatable and more prone to violence - the conviction underlying this proposal, undermines decades of work in the destigmatisation of persons with mental illness. The suggestion of using monitoring devices on psychopathic persons, apart from placing unmanageable strains on community mental health, legal and law enforcement capabilities, is unwarranted on the basis of the evidence of its usefulness. The years of research from the MacArthur Foundation's Risk Assessment Study consistently shows that psychopathic traits do not moderate the effect of treatment involvement on violence¹. What does seem to impact rates of violence among people under compulsory community treatment is the context of the neighbourhood into which they are placed. The salient feature of the social environment that has a larger effect on violent outcomes than individual characteristics is poverty². Efforts to put persons under LCT into appropriate or supported housing are more likely to reduce the risk of violence than "tagging" mentally ill people to be monitored as potential criminals. Further, it

¹ Skeem, JL, Monahan, J, Mulvey, EP. (2002). Subsequent Violence Among Civil Psychiatric Patients. *Law and Behavior*. 26(6), 577-603

² Silver, E, Mulvey, EP, Monahan, J. (1999). Assessing violence risk among discharged psychiatric patients: Toward an ecological approach. *Law and Human Behavior*, 23(2), 237-255

is these efforts that are a hallmark of an advanced culture, and a society that includes rather than excludes its members.

If the government considers that conditions for monitoring forensic patients (and others) on community treatment orders should be permitted, the power to impose such conditions should be given to the Mental Health Review Tribunal rather than the Director of Mental Health.

Further, the exercise of the power to impose monitoring conditions should be subject to clear guidelines and limits which should be specified in the Act, consistent with the principles of accountability and transparency which are referred to in the Bill.

Minister Springborg in the first reading speech gives examples of the circumstances in which such conditions may be imposed. These include that the person is "a high risk patient", 'an identified risk of absconding', and that there is a 'real and identified need to ensure the patient's location is monitored' etc but none of these examples are defined or included in the draft Bill with that the result that the Director of Mental Health is given unfettered discretion.

Of particular concern is that the imposition of monitoring devices (ankle monitors) is given as an example of the type of monitoring condition that may be imposed. The imposition of a monitoring device is a serious breach of the autonomy, liberty and integrity of an individual who has not been convicted of any criminal offence.

The imposition of a monitoring device has the potential to impact significantly on the recovery of the patient and is incompatible with the objectives set out in Section 8 of the Mental Health Act, which provide that people under the Act should have the same human rights as other people and that the person is

"to the greatest extent practicable, a person is to be helped to achieve maximum physical, social, psychological and emotional potential, quality of life and self-reliance"

The use of monitoring devices is particularly associated in the minds of the public with serious sexual offenders and therefore the wearing of such a device would increase stigma and discrimination against people subject to such a condition and impact on the emotional and mental well being of the person.

Accordingly, we question whether such a device should be permitted at all but if it is to be permitted it should be as a last resort; and the decision to impose such a condition should not be made extra-judicially by a bureaucrat but should **only** be made with judicial authority (ie by the Mental Health Review Tribunal or the Mental Health Court).