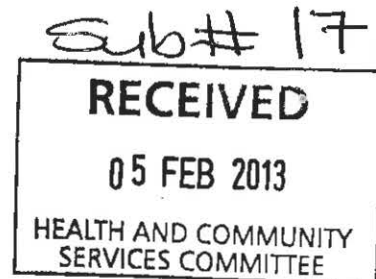


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Mr Trevor Ruthenberg MP  
Chair  
Health and Community Services Committee  
Parliament House  
George Street  
BRISBANE QLD 4000



Dear Mr Ruthenberg

**Submission re Queensland Mental Health Commission Bill 2012**

Legal Aid Queensland (LAQ) provides legal information, advice and representation to financially disadvantaged people for a range of matters arising under state and Commonwealth law. LAQ's Mental Health Unit lawyers represent the majority of people charged with indictable offences appearing before the Mental Health Court.

LAQ supports the primary objective of the Queensland Mental Health Commission Bill 2012 (the Bill) to establish a Queensland Mental Health Commission.

This submission focuses instead on the Bill's proposed amendment of the *Mental Health Act 2000* (the MHA) to provide for

- the monitoring of involuntary patients by way of fitted GPS tracking anklets (clause 52 of the Bill) and
- the suspension of limited community treatment for a class of patients in response to an assessment by the Director of Mental Health that there is a serious risk to the life, health or safety of a person or a serious risk to public safety (clause 73 of the Bill).

**A. Consistency with the purposes of the *Mental Health Act 2000***

The purpose of the *Mental Health Act 2000*, as set out in s 4 of the Act is:

*"to provide for the involuntary assessment and treatment, and the protection, of persons (whether adults or minors) who have mental illnesses while at the same time—*

- (a) *safeguarding their rights and freedoms; and*
- (b) *balancing their rights and freedoms with the rights and freedoms of other persons."*

LAQ submits that the committee should assess the above two proposals in the Bill against the purposes of the *Mental Health Act 2000*, to ensure that they implemented in a way that does not unnecessarily reduce the rights and freedoms of patients, nor undermine their treatment.

In this regard, LAQ notes:

- The health of a patient who suffers from paranoia may be adversely impacted by the fitting of a GPS tracking bracelet as many paranoid persons have a morbid fear of electronic or mechanical surveillance;
- Patients are not criminals, and so should not have fewer rights than criminals. Presently, ankle bracelets are only applied to a select category of criminals - prisoners subject to orders under the *Dangerous Prisoners (Sexual Offenders) Act 2003* and some prisoners who are granted leave of absence or parole under the *Corrective Services Act 2006*. The Bill places patients in the same category as convicted offenders.
- Restricting leave for a class of persons who may have had no input into the event giving rise to that action will confuse, anger and alienate those patients, thus making it more difficult to treat them and manage their risk. It will also risk setting the patients against one another; creating a new, distinct and continuing risk.

### ***B. Ensuring accountability of decision making.***

LAQ considers that the important goal of transparency and accountability of government decision making could be better achieved in the Bill in relation to the above matters by the proposals set out below.

#### **B1. GPS monitoring of forensic patients – including criteria for decisions**

The proposed new section 131A of the MHA would allow the Director of Mental Health to require that a certain class of patient (classified patients, forensic patients or patients subject to a custody order under section 273(1)(b)) be monitored while undertaking limited community treatment. The monitoring order may be amended or revoked by the Mental Health Review Tribunal (MHRT).

The Bill is deficient in that it does not contain any criteria to guide the director to make consistent decisions about when patients should be required to be fitted with GPS tracking anklets.

The *Mental Health Act 2000* contains criteria for other key decisions – for example, s108 requires an authorised doctor to be satisfied that the treatment criteria set out in s14 of the Act apply to a patient before making an involuntary treatment order.

Also, s129 of the *Mental Health Act 2000* clearly sets out criteria for the exercise of the director's power to approve limited community treatment for a classified patient, as set out below:

*“(3) The director must not give an approval under subsection (2)(b) unless the director is satisfied there is not an unacceptable risk of one of the following events happening if the treatment were undertaken in the community—*

- (a) the patient would not return to the authorised mental health service when required;*
- (b) the patient would commit an offence while away from the health service;*
- (c) the patient would endanger the safety or welfare of the patient or others.*

*(4) Also, in deciding whether to give the approval, the director must have regard to the following—*

- (a) the patient's mental state and psychiatric history;*
- (b) the offence leading to the patient becoming a classified patient;*
- (c) the patient's social circumstances;*
- (d) the patient's response to treatment and willingness to continue treatment.”*

LAQ proposes that the criteria to be included should guide the director to achieve the policy objectives for the proposal to fit GPS tracking devices to patients as set out in the Explanatory Notes to the Bill.

By way of example, criteria might include that the director must not fit a GPS tracking device unless satisfied that doing so:

- is necessary to avoid another incident of the patient absconding, in circumstances where a patient has previously absconded whilst on limited community treatment;
- there is a high risk of the patient absconding, and of harm to the patient or another person arising if the patient is not promptly located;

- the fitting of a GPS tracking device is preferable to requiring escorted leave, having regard to the principles of the Act

Some of the matters that may be relevant for consideration in deciding whether or not to make an order for electronic monitoring are:

- The patient's mental state
- The patient's treatment needs
- The patient's history of compliance with treatment and conditions of release for limited community treatment
- The offences leading to the making of the forensic order
- Previous episodes of absence without permission
- Current risks identified on the patient's risk assessment and management plans
- Victim or community concerns

### B2. Suspension of limited community treatment for a class of patients – criteria for taking actions and setting aside orders

Section 493AC(2)(b) of the Bill states that the director must, when undertaking the review as directed by the Minister, decide "whether action is necessary to remove, or to control or manage, the related risk".

However s493AE of the Bill, which authorises the action, does not require a connection to be made between the "related risk" and the actions that the director orders. In this regard s493AE would be improved by expressly providing that the director may only do the things listed in s493AE(2) of the Bill if the director is satisfied that the "actions are necessary to remove, or to control or manage, the related risk".

If this proposal is supported by the committee, then s493AH in the Bill should also be amended to state the tribunal must also set aside the order where it decides that the actions ordered by the director were not necessary to remove, or to control or manage, the related risk.

### B3. Review of decisions

LAQ welcomes the inclusion of review provisions in the Bill.


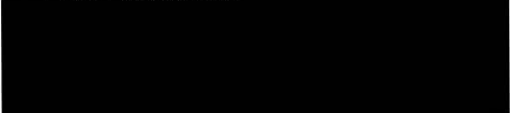
However LAQ notes that the patients who are likely to be impacted by the decisions made in the Bill are necessarily vulnerable due to mental illness, and may have difficulty initiating any available review process.

In this regard, LAQ requests that the committee give consideration to the Bill being changed to position the Mental Health Review Tribunal as the approval authority, rather than the review body, for the director's decisions to require GPS monitoring of patients on limited community treatment, or to suspend limited community treatment for a class of patients.

By way of example, we refer the committee to the *Guardianship and Administration Act 2000* in which the Queensland Civil and Administrative Tribunal is accorded the role of giving approval for a relevant service provider to contain or seclude an adult.

Thankyou for consideration of this submission.

Yours sincerely,

  
  
Anthony Reilly  
Chief Executive Officer  
Legal Aid Queensland.