11.1.11

Queensland Voice
for Mental Health Inc

4 February 2013

Sub # 18

RECEIVED
05 FEB 2013
HEALTH AND COMMUNITY SERVICES COMMITTEE

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

Via email: hcsc@parliament.qld.gov.au

Dear Mr Ruthenberg

Re: Queensland Mental Health Commission Bill 2012

Please find attached our submission on the above Bill.

Should you require any further information please contact me as referenced below.

[redacted]

Yours sincerely

Noel Muller
President

Queensland Voice for Mental Health Inc.
ABN: 43 221 552 212
T: 07 3252 3999 E: info@qldvoice.org.au
A: Ground floor, 7 Mollon Street, Bowen Hills, Qld 4006
PO Box 3039, Newstead, Qld 4006
www.qldvoice.org.au

Queensland Voice
for Mental Health Inc

Queensland Mental Health Commission Bill 2012

Submission by:

Queensland Voice for Mental Health Inc.

February 2013

Queensland Voice for Mental Health Inc. is the representative body for Consumers and Carers, both individually and through organisations, throughout Queensland. As such this submission is focused on the rights and representation of "persons with a lived experience" of mental illness and/or alcohol and other drug issues. This submission is divided into two parts dealing respectively with that part of the Bill related to the Mental Health Commission, and that part of the Bill amending community based treatment orders for persons with a mental illness.

This submission is made in accordance with a resolution of the Management Committee of Queensland Voice for Mental Health Inc. and is signed for and on behalf of the Management Committee by:

[redacted]

Noel Muller

President

For further information contact:

PO Box 3039 Newstead Qld 4006

Phone: (07) 3252 3999

Email: secretary@qldvoice.org.au

1. Executive Summary

a) The Commission and Advisory Council

The key aim of this submission is to ensure that the Queensland Mental Health Commission (QMHC) or the Commission, carries forward the rights and abilities of persons experiencing a mental illness or alcohol or other substance issues (consumers) and their families and support people (carers) to be an integral part in the planning and delivery of clinical, community and social care.

There is strong evidence that recovery focused care is much more effective when consumers and their carers have a shared responsibility for decision making with the clinical and non-clinical service providers. It is critical that consumers and carers are appropriately engaged, and are perceived to be engaged at all levels in decision making regarding mental health policy, planning and service delivery; and sound business decisions are made by the providers of any service, health-related or otherwise, who consult regularly with their clients.

There have been very significant cuts in the staffing and resources dedicated to that engagement in recent months. The Commission and the Advisory Council must operate transparently if they are to regain the momentum lost in regard to the development of consumer and family programs. Failure to achieve this will lead to significant under performance in recovery based services and a consequent increase in the number of people seeking, or returning to, costly acute treatment beds.

It would be advantageous for the Commission itself to have a cadre of executive staff which includes individuals with a significant lived experience, which would support communication and consultation with consumers. It would also provide an advantage in developing a "peer" workforce which, in turn, would be helpful in the empathetic and effective delivery of services at acute and community level. Importantly it would also aid in the Commission being customer focused rather than the present inward-looking provider and professional focus.

Without such changes, the Bill risks the QMHC being perceived as yet another bureaucracy that will not be respected by the customer and will fail to gain traction in driving reform and success in a sector of health that is becoming increasingly critical to the future of the Queensland community. The amendments to the Act (the Bill)

b) Amendments to the Mental Health Act (the Bill)

The amendments to the Mental Health Act bundled with the Bill forming the Commission are in themselves a demonstration of the need for an independent, knowledgeable and balanced Commission to advise Government on mental health matters. They would seem to be a poorly informed over reaction to the media stories surrounding two minor incidents.

There does not seem to have been any significant level of risk assessment related to the level of 'Absent-Without-Leave' infringements that these amendments are proposed to counter. Certainly these are rare for the class of patient said to be involved, and there has been no explanation of the risk purported to exist to the community. The amendments in themselves however would appear to have considerable potential for increasing the risk to patients publicised under the amendments information provisions.

The amendments give the Minister power to direct the Director of Mental Health, as the person authorised under the act, to authorise the withdrawal of Community Treatment Orders from individual, and classes of patients under treatment in secure facilities. In practice, if not law, this would allow the Minister to override the sound judgement of a team of clinical, and other, with the advanced skill and training, to have made a valid assessment, based on a comprehensive understanding of the consumers case. In many cases the persons or class of persons will not have a conviction against them. The amendments then increase the level of surveillance, loss of liberty and privacy and permit in some cases the electronic tagging of those persons. This is a major attack on the personal freedoms, the right to effective treatment and the long term recovery prospects of individuals in the Forensic Mental Health system.

> *'It takes a long time to regain your life, confidence, and sense of purpose after an episode. For all that to be suddenly removed from you by an enforced power which takes away your freedom and rights as a person to make decisions is overwhelmingly disempowering and shameful....'and further '...it's the whole sense for people that if they do something wrong in society, the powers at hand quickly respond in a penal way of thinking. It's a difficult way to live, knowing that one mistake gives the authorities the power to remove your rights and freedom'*

Even more importantly these amendments are stigmatising to all who suffer a mental health issue as they effectively brand them as "mad, bad and dangerous". They can, and will, bring about a breakdown in the trust established between consumers and clinicians. They have the potential for breaking down open communication between clinicians and emergency services. They open the probability of legal challenge, and as such may be indefensible at Law given Australia's obligations under UN Human Rights Conventions and more specifically the UN convention on the Rights of Persons with Disabilities. United Nations 1992, Resolution on the Protection of Persons with Mental Illness and the Improvement of Mental Health Care.

Before approving the inclusion of these amendments in the Bill, the Committee should: - seek opinion on their effectiveness; detailed risk assessment for both the community and patients involved; Clinical opinion on the effects on recovery; professional association advice on the potential for ethical conflict; and a legal opinion on the result of a challenge at Law and associated costs.

The tasking of a review of the security practices of High Secure Mental Health establishments, the resources required and the facilities available for the Forensic mental Health service should be a priority for the QMHC.

Queensland Voice for Mental Health Inc. recommends the deletion of these amendments.

2. Submission regarding Queensland Mental Health Commission Bill

a) Introduction

Queensland Voice for Mental Health Inc. is the representative body for Consumers and Carers, both individually and through organisations, throughout Queensland. As such this submission is focussed on the rights and representation of "*persons with a lived experience*" of mental illness and/or alcohol and other drug issues.

b) Definition of lived experience

Lived experience or individuals experiencing mental health issues, should be defined to cover persons who has with a mental illness, and/or alcohol and other drug issues and their families and carers. There do not appear to be any specific definitions of "lived experience" in use in Queensland legislation.

c) Structure

The structure proposed in the Bill, purported to be modelled on the NSW legislation, and drawing on the New Zealand experience, has the goal of developing one of the most effective Mental Health Commission. We, Queensland Voice for Mental Health Inc., respectfully suggest that the Bill will fall well short of this goal.

We understand that the NSW Commission has only been in existence since July 2012 and is still only in the development stage. The NSW legislation, from a comparative reading with this legislation, seems to have greater independence in that, in certain circumstances, it allows reports to be directly reported and tabled in Parliament. The New Zealand Commission is by definition an "independent entity" initially created within the NZ Justice Department. It has the authority to report independently to Parliament although; routine reporting is through the Minister for Mental Health. The three commissioners in NZ are independent appointments and are not employees of the Department of Health.

It should be noted when considering the Bill that Queensland does not have a "Minister for Mental Health" and that all functions of Government in the sector have been concentrated in the Health Department. This creates a strong perception that the "Medical/Clinical Model" of the recovery programme is given priority. This, together with the move for the Commission to be structured within Health alongside the Systems management role of the MHATOD branch, gives cause to some question of how the independence of the Commission will be perceived.

While the QMHC may issue formal recommendations to public sector agencies those recommendations and the reports on their implementation only become public documents at the discretion of the Minister or through Freedom of information processes. We believe all such reports should be published and on public record.

d) Functions

The QMHC under the Bill will function as a statutory body with advisory rather than executive power. To become anything other than an irrelevant bureaucracy a statutory body needs the respect of those it deals with as providing a considered and independent voice.

The functions outlined in the legislation are worthwhile, and achievable, if the legislation is amended to gain transparency and perceived independence.

e) Priorities

An important priority not covered in the Bill is the link between the justice and legal system and Mental Health. While the significant over representation of persons with a mental illness in the criminal justice and corrections system is widely recognised, the civil legal areas of privacy, human rights and protection from unfair trading practices needs urgent attention.

In particular, laws related to the use of compulsory invasive treatment, access to one's own personal medical records, and protection from predatory sales and finance contracts should be reviewed. We feel that these are all matters for consideration and review by the Commission and the Advisory Council.

f) Discussion related to proposal for the Bill

The below comments and in some cases suggestions are based principally on the Explanatory Notes, in relation to the Bill, released when the Bill was tabled in Parliament and the content of the Bill.

From the Explanatory Notes

The Bill should also cover the establishing an effective relationship between All "appropriate human services" including those that are provided by other levels of Government and the private sector.

Without prompt public reporting powers the QMHC will not have the power to lead reform and develop a culture that is conducive to recovery. This is where the difference between "formal recommendation" and having budgetary power is a point of contention.

While the Commission purports to act on a "whole of Government Model," there is no legislative compulsion for Departments to consult with the commission on possible draft legislation that may impact on persons with a mental illness or drug and alcohol issues, their families or care givers. The only influence is the ability to bring pressure to bear through reporting. While the Commission could be expected to have influence inside Health, and with HSS's, the extent of influence its recommendations would have in other Departments or agencies is in doubt.

The reporting function thus becomes the major means of influencing outcomes and will depend on the resources and ability of the Commission to gather information on program expenditure and performance right across the sector. The draft legislation requires other agencies to report to the Minister, but there is no mechanism to ensure any further action.

At least a comprehensive annual report should be presented to the Parliament and be on the public record.

It is important that the composition of the Council is seen as credible and representative at the time of appointment.

It is also vital that the Chairman and members are provided with, and maintain, communication capability and credibility with the stakeholders they represent. The establishment of a two way communication loop through the Council would ensure that the Commission was in a position to make recommendations that were innovative, effective and acceptable to consumers, carers and the community.

In particular the consumer and carer level of engagement in MH and ATODS policy making and service delivery has been a significant factor in the development of the recovery model. Evidence based practice indicates that further engagement is likely to enhance effectiveness .This makes the involvement of consumer and carer representation, preferably based on lived experience, critical in policy formulation. To be effective, the Commission model needs to develop an effective and continuing communication with consumers and carers, the people who are directly affected by the decisions it makes, both through the Advisory Council and more directly with the Commissioner.

Queensland Voice for Mental Health Inc. believes that representation of Consumers and carers should be enshrined in the legislation.

A number of peak bodies were involved in the initial consultation process, members of which also offer the opportunity to develop a group of appointees to the Council who have on-going links to the stakeholders that they represent. While the Minister retains the right to select and appoint Council members, there is a strong case for linking appointments to those organisations, if the credibility of the Commission is to be maintained in the community.

The Advisory Council members' right to be supported, financially and as appropriate, should be legislated.

From the Bill:

4 (2) (a)

"(ii) promotes the best interests of—

(A) people with mental health or substance misuse issues, and their families, carers and support persons; and

(B) people who are vulnerable to, or otherwise at significant risk of, developing mental health or substance misuse issues; and"

Queensland Voice for Mental Health Inc. consultation strongly indicated that this was the key concern of consumers and carers and that the Commission would be ineffective, and possibly counter-productive, unless strong consumer and carer representation was legislated.

The Bill does not provide any legislative requirement for consumer or carer representation on either the staffing of the commission or membership of the council, nor does the legislation provide for support by the Commission for Advisory Council consultation and communication with consumers and carers on an on-going basis.

From the Bill

4 (2) (a)

"(iii) drives innovation and best practice through knowledge sharing, research and evidence-based policy and practice; and

(iv) encourages integration of relevant services; and"

Queensland Voice for Mental Health Inc. does not believe that the placement of the Commissioner "inside Health" places him/her in the most advantageous position to monitor and influence policy and service delivery across the broad range of Departments, NGOs, Private sector and Community services that need to plan and work together for the most efficient and optimal delivery of the entire recovery based model.

The level of perceived transparency to be achieved will require the appointment of an Advisory Council with demonstrable links to all stakeholders.

Summary and Amendments

The Government has made clear its preference for a statutory body and has drafted the Bill regarding the commission and the council with that clear aim.

The draft appears workable with some amendments to clarify the reporting functions of the commission and the council.

Immediate discussion needs to take place on a strong and widely acceptable definition of "lived experience" to cover both consumer and carer situations.

Attached are set out some suggested amendments to the Bill.

g) Suggested amendments to the draft Bill

Areas changed or added are in *italics and underlined*.

From the Bill:

"24 Commission staff

(1) The commission may employ the staff it considers appropriate to perform its functions.

(2) The staff are to be employed under the *Public Service Act 2008.*"

Queensland Voice for Mental Health Inc. suggests the following additional clause:-

(3) At least two (2) senior management level members of the commission staff will have lived experience of mental illness or substance misuse.

From the Bill:

"26 Commission to facilitate implementation of, and report on, whole-of-government strategic plan

The commission must—

(a) facilitate the implementation of the whole-of-government strategic plan; and"

Queensland Voice for Mental Health Inc. suggests the following additional clause:-

(b) consult with all Government Departments on the development of legislation where it particularly impacts persons with a mental illness or misuse alcohol or other substances, their families or care givers; and

(c) monitor and report to the Minister on its implementation; and

Queensland Voice for Mental Health Inc. suggests the following additional clause:-

(d) prepare an annual report to be tabled in Parliament.

Provision for annual report to be tabled will ensure on-going transparency into the operations of the Commission. The delay and complication of seeking information under freedom of information legislation makes it critical that standard procedure should be for publication of all decisions and the reasoning behind them at the earliest opportunity.

From the Bill:

"39 Membership

(1) The council consists of the number of person appointed by the Minister that the Minister considers appropriate.

(2) In making an appointment the Minister must ensure —

(a) the membership of the council reflects the diversity of the Queensland community; and"

Queensland Voice for Mental Health Inc. suggests the following additional clause:-

(b) that members have appropriate skills, knowledge or experience, of mental health and substance misuse issues in relation to the following—

(i) service users and their families, carers, and support persons;

(ii) service providers;

(iii) people living in remote and regional communities;

(iv) members of culturally and linguistically diverse communities;

(v) Aboriginal and Torres Strait Islander persons; and

(c) not less than one quarter of the membership of the council will be persons with a lived experience of mental illness or substance misuse.

From the Bill:

"39 (3) Members are to—

(a) hold office for the term, not longer than 3 years, stated in the member's instrument of appointment; and"

Queensland Voice for Mental Health Inc. suggests the following additional clause:-

(b) be eligible for re-appointment subject to Ministerial approval; and

(c) be paid the fees and allowances decided by the Governor in Council*; and*

Queensland Voice for Mental Health Inc. suggests the following additional clause:-

(d) be provided with reasonable support to be able to communicate and consult with the members of the community or the sector being represented.

Eligibility for re-appointment included for establishment of continuity where advantageous. The inclusion of "reasonable support" is to ensure that consumer and carer representatives in particular can maintain contact with those persons and their organisations.

From the Bill:

"48 Commission must support council

The commission must support the council in performing its functions

Queensland Voice for Mental Health Inc. suggests the following additional clause:-

by providing information to the council about the performance by the commission of its functions—

(a) at regular intervals; or

(b) when requested by the council; and

Queensland Voice for Mental Health Inc. suggests the following additional clauses:-

(c) by providing support for all council members to communicate and consult with:

a. persons experiencing mental illness or substance misuse, their families, carers and support persons; and

b. community organisations providing service or support to such persons; and

c. research organisations; and

d. professional and academic organisations.

Suggested changes are to ensure that the Council has the resources to carry out its functions. The alternative would be to establish a separate Secretariat for the Council but this would be costly and could lead to a culture of separation between the Commission and the council.

h) Benefits accruing from amendments

Over recent years considerable progress has been made in Queensland in developing a recovery model in mental health, alcohol and other drug programs. There is still a long way to go to ensure that those improvements are in place in all situations and across the whole State. A significant result of the restructuring of Health has been the removal of central planning and program oversight and distribution of those functions across Health and Hospital Services at a local level. In the longer term this will bring these functions closer to the customer but the immediate effect has been to completely cease the implementation of consumer and carer participation while the new Board structures were put in place.

Queensland Voice for Mental Health Inc. is concerned about the loss of momentum and it is therefore critical that the formation of the Commission and Advisory Council is immediately acceptable to the target customer group.

Consumers and carers have long memories of a system which has used a "clinical model", which concentrates power, information and decision making in the hands of clinicians or service providers and disempowers consumers and their carers.

Local services across the State will, by definition, vary in their structure and operation and there is considerable difference appearing already in consultation levels, in the engagement and use of peer workers and in their co-operation with consumer and carer representative groups.

Reverting to any system which can be seen as reviving or maintaining the previous model will not gain approval or acceptance at the "customer" level.

The benefits to be gained from the suggested amendments are:

Commission staff with Lived Experience.

This would ensure that the customer point of view was always considered in the work of the commission. It would provide useful insight into the effect of whole of Government programs "in house".

Most importantly it would demonstrate clearly to consumers and carers, the principle stakeholders, that their interests are the primary concern of the QMHC.

Commission Whole of Government Plan.

The suggested amendments are targeted at ensuring the effects of any legislation on those with a mental illness and/or drug and alcohol issues, their families and carers, involvement, and engagement is given active consideration.

The various deliberations, and the reasons for the adoption of their conclusion, should be reported to Parliament and should become a public document. An annual report to the Parliament would give confidence in the workings of the Commission to the customer group.

Advisory Council Membership.

While the function of the Council is advisory rather than executive it carries a very important role in ensuring that the Commission is not seen as "more of the same" or "another bureaucracy" at customer and Non-Government organisation level.

To achieve this result, specific levels of representation on the Council, divided between administrators, clinicians, service providers and consumers and carers should be enshrined in the legislation, together with the provision for re-appointment where appropriate and where it is considered advisable for continuity.

Support by Commission.

To be effective the Commission and the Council must be mutually supportive. To achieve this it is critical that members of the Council have the ability to engage, and remain engaged with the section of the community that they represent.

This will require the support of the Commission in establishing and maintaining communication and consultation with both the customer group and with service providers and clinicians. If the Council is to be effective in driving both clinical, social and cultural reform for the customer group, the members must have up to date and relevant information. In particular consumer and carer representatives have limited specific formal organisational support.

This support could be provided by a dedicated mechanism that would ensure the co-operational spirit between the Council and the Commission.

3. Submission regarding amendments to the Act

Queensland Voice respectfully recommends that the amendments to the Mental Health Act be deleted from the Bill, in their entirety, before the Bill is resubmitted to the Parliament because they would be ineffective, are not justified by risk assessment, would have a negative impact on recovery paths, conflict with ethical and practice standards of clinicians and are unlikely to withstand legal challenge as they conflict with human rights conventions to which Australia is a party.

a) Effectiveness

The Minister is unlikely to be qualified to make a judgement for review, and will therefore legally have to rely on the advice of the senior mental health clinicians within the Department. These are the people who would then be tasked with carrying out a review of decisions taken in their own Department. That review would be into the diagnosis and treatment plan for an individual, or a class of individuals. The review does not apparently take into account the resources or standard of treatment delivered but would appear to be aimed at the rights and freedoms of the patient. In a situation where a person is mentally ill the withdrawal or threat of withdrawal, of freedoms is unlikely to have a deterrent or reforming effect. It is in fact more likely to lead to a breakdown of trust and be counter-productive. Similarly Electronic tagging or the threat of publicity would be ineffective in preventing absence without leave.

b) Risk Assessment

It is assumed that the amendments have been brought forward to deal with a perceived risk to the community from forensic patients using Community Based Treatment orders (CBTO) to remove themselves from secure treatment facilities. There would appear that no risk assessment material has been supplied to justify the perception, and even more importantly there has been no assessment of the increase in risk to the patient likely to be brought about by putting these changes into practice. It is important that the Emergency Services, particularly Police, are trained and motivated to deal with those with mental health issues by de-escalating situations. These amendments effectively label certain persons, with little justification, as "mad, bad and dangerous". This has led to tragedy on too many occasions to be ignored. The Committee should require a comprehensive risk assessment be carried out before allowing this legislation to go before the house.

c) Impact on recovery

The building of rapport and trust between clinicians and consumers is at the very heart of gaining any level of recovery. This is never more important than in handling the difficult recovery path for those in the Forensic system. In many cases the loss of liberty and restrictions placed on a person given a Mental Health Order is significantly longer than a person going through the courts, judged to be of sound mind. A Forensic order does not have a termination date, and in practice the Mental Health Review Tribunal will tend to be more restrictive in granting leave than a Parole Board in similar circumstances. This tends to make transition to recovery and back into the community more difficult and the proposed amendments restricting CBTOs and applying extra conditions make this a further barrier to recovery. The prospect of electronic tagging, a practice normally reserved for serious sexual offenders is unlikely to be a trust building exercise. The Committee should consider the possible negative effects on recovery based practice of the proposed amendments.

d) Conflict with ethical standards

Queensland Voice understands that a number of leading clinicians have expressed discomfort at the potential for conflict between this policy and the ethical standards of their profession. That is for their associations to comment upon. The lay view however seems to indicate that if a clinician is using best practice, and is supported by the necessary resources, it is unlikely that a "Ministerial Review Order" which may lead to a change of practice regarding CBTOs for a consumer, or class of consumers will be acceptable from a professional or ethical point of view. The opinion of clinicians and their associations should be sought, and given consideration by the committee.

e) Likelihood of legal challenge

The amendments introduce a range of measures directed at persons suffering from an illness, rather than having committed a criminal offence. Those measures are in effect equivalent to measures imposed on "serious sexual offenders" who are judged to have not reformed and are of significant risk to the community. It is also within the amendments that onerous conditions may be placed, after a ministerially directed review, on a class of patients rather than an individual. This goes beyond the sanctions available under criminal law, and can be applied to persons with no criminal convictions. The Committee should consider the likelihood of a legal challenge to the amendments, the probability of their disallowance, and the significant costs involved to the Government. A reasonable review of recent Australian Courts findings and Justices Reasons would expose the unsustainable nature of laws that attempt to deal with a class rather that the individual.

f) Conflict with Human Rights obligations

The amendments would appear to be in conflict with the following principles and convention in which Australia is a party of has robust guidelines for:

UN Principles for Protection of Persons with Mental Illness:
Principle 1 Fundamental freedoms and basic rights
Principle 8 Standards of care
Principle 9 Treatment
Principle 25 Saving existing rights

UN Convention on Rights of Persons with a Disability:
Article 4 General obligations 1) a – e
Article 5 Equality and no discrimination
Article 14 Liberty and security 1a & b
Article 22 Respect for privacy
Article 26 Habitation and Rehabilitation

Australian national statement of principles for Forensic Mental Health Services
Principle 1 Equivalence
Principle 7 Ethical issues
Principle 9 Individualised care
Principle 13 Legal reform issues

Mental health statement of rights and responsibilities Commonwealth Department of Health and Ageing

References

Throughout our submission, and in particular our comments relating to the Bill in respect of the changes to the Mental Health Act, we have relied on, and in some cases referenced, the documents, plans, statements, standards and convention listed below; further and with respect, we refer the Committee to the foresaid, - it is our strongly held belief that, these documents strengthen our position that the amendments to the Mental Health be not legislated:

The Roadmap for National Mental Health Reform 2012-2022, The Council of Australian Governments (COAG) Canberra,

Australian Government 2010, National Standards for Mental Health Services 2010, Commonwealth of Australia, Canberra.

Australian Health Ministers' Advisory Council 2006, *National Statement of Principle for Forensic Mental Health Services*, Australian Health Ministers' Advisory Council, Canberra.

Mental Health Consumer Outcomes Task Force 2000, *Mental Health Statement of Rights and Responsibilities*, Australian Government, Canberra.

United Nations 2006, United Nations Convention on the Rights of Persons with Disabilities, United Nations, viewed 31 January 2013,

United Nations General Assembly 1992, Resolution on the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, United Nations, Geneva.