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Mr Peter Dowling MP
Chair, Health and Community Services Committee
Parliament House
George Street
BRISBANE QLD 4000

Sub# 19

RECEIVED
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HEALTH AND COMMUNITY SERVICES COMMITTEE

4 February 2012

Dear Mr Dowling

Re: Mental Health Commission Bill 2012

I am writing in response to the Queensland Parliament Health and Community Services Committee Inquiry into the Mental Health Commission Bill 2012. AMA Queensland welcomes the opportunity to provide feedback to the Committee on this important issue. Please find AMA Queensland's submission attached.

AMA Queensland looks forward to providing further input on this issue. Please contact our policy advisor Emily Cotterill on 07 3872 2258 or at e.cotterill@amaq.com.au if you would like to further discuss the issues raised by AMA Queensland.

Yours sincerely

[redacted]

Dr Alex Markwell
President
AMA Queensland

AMA Queensland Submission

Queensland Mental Health Commission Bill 2012

Queensland Mental Health Commission

AMA Queensland welcomes and supports the creation of the Queensland Mental Health Commission (the Commission) and its stated aims of driving ongoing reform toward a more integrated, evidence-based, recovery-oriented mental health and substance misuse system in Queensland.

In particular AMA Queensland supports the development of a whole-of-government strategic plan by the Commission and the inclusion of a set of guiding principles in the Queensland Mental Health Commission Bill (s5) to direct the strategic provision of mental health and substance misuse treatment services across the state.

AMA Queensland is pleased that the QMHC will provide a statewide perspective to policy and planning for mental health services – especially for specialised services like forensic mental health, indigenous mental health, and youth and paediatric mental health – which individual Hospital and Health Services may have difficulty providing without additional support and direction.

AMA Queensland especially welcomes the representative role given to those who have experienced mental health issues on the Queensland Mental Health Commission Advisory Council. Their insight and input will be invaluable to the Commission as it evaluates and guides the system.

AMA Queensland has the following concerns about the Queensland Mental Health Commission Bill 2012.

The Commission has limited powers to effect change

While AMA Queensland is strongly supportive of the aims of the Commission and its guiding principles, AMA Queensland notes that the Commission has very limited powers. The Commission's role is to drive change through the creation of a whole-of-government strategic plan, as well as monitoring and reporting on the plan's implementation and achievements. However, the Commission has no coercive powers to ensure that the plan is implemented by the relevant agencies. Without measures to ensure the strategic plan is implemented, there is a risk that the resources put into its development will be wasted.

AMA Queensland is particularly concerned that s34 does not create an actionable obligation on relevant agencies to 'have regard to' the plan and principles when exercising their functions; or consult with the Commission on the activities, expenditure and initiatives required by the strategic plan. Without an actionable obligation, there will be little incentive for relevant agencies to alter their actions to incorporate the strategic plan or reflect the Bill's Guiding Principles.

In addition, AMA Queensland is concerned that a Commission situated within the Health portfolio may have limited reach and authority to effectively achieve whole-of-government change and ensure that the strategic plan is adequately funded and implemented. AMA Queensland looks forward to seeing the detailed plan for Ministerial oversight and inter-departmental governance of the strategic plan. Inter-departmental planning and co-ordination should occur at both the state and local level.

AMA Queensland would also suggest that, as the author of a statewide strategic plan, the Mental Health Commissioner should have more of a role in directing the scope, mix, quantity and price of mental health services being purchasing by the state.

The Government must commit to funding the *Queensland Plan for Mental Health 2007-2017* until a new plan is created

One of the Commission's main functions is to prepare, monitor, report on and review a whole-of-government strategic plan for mental health. This plan will: provide strategic guidance and direction about the intended outcomes of government funding and the development and implementation of mental health policy; establish performance measures for evaluating the system; and strengthen partnerships and the integration of services across relevant agencies.

The recent natural disaster events across Queensland again highlight the need for effective and accessible mental health services. Funding is needed now to support those at risk. AMA Queensland notes that Queensland already has a comprehensive plan for mental health services; the *Queensland Plan for Mental Health 2007-2017* provides a strong basis on which to build a comprehensive mental health system. AMA Queensland again calls upon the government to fully fund this plan until the new 'whole-of-government strategic plan' is ready for implementation. The development of a new plan should not be an excuse to delay much needed increases to mental health funding until a new plan is prepared.

Consultation with clinicians, the community, other health care providers and stakeholders is needed to strengthen the whole-of-government strategic plan

AMA Queensland considers that thorough and thoughtful consultation with clinicians, the community and other health care providers and stakeholders is essential to the formation of a comprehensive and functional strategic plan. Input from these sectors is vital to provide the Commission with the information it needs to create a plan, and to encourage buy-in from mental health care providers and other stakeholders.

AMA Queensland is also concerned that the scope of the Commission's strategic planning and monitoring function may not adequately take general practice and the private and community sectors adequately into account. These providers of mental health services do not appear to be captured by the definition of 'relevant agencies'.

The majority of mental health services are delivered by general practitioners, psychologists, private specialist medical practitioners and other providers.[1] Often these clinicians must coordinate with both the public health system and government funded health agencies as well as other human services agencies. The Commission must consult with, and take into account, non-government services, including general practice, psychologist and specialist medical practitioners in private practice, when formulating its strategic plan and include them in the partnerships it aims to foster and develop.

In addition, Hospital and Health Services must provide the lead at a local level and engage with local clinicians, Medicare Locals, and other stakeholders and agencies to plan and implement services for those with mental illness. To support this intention, AMA Queensland suggests that the engagement obligations contained in the *Hospital and Health Boards Act* 2011 be mirrored in this legislation.

[1]AIHW 2012. *Mental health services in brief 2012.* Cat. no. HSE 125. Canberra: AIHW.

Amendments to the Mental Health Act 2000

Limited Community Treatment is a recognised clinical treatment and assists with reintegration and recovery

The aim of the forensic mental health service is to treat patients, aid recovery and reintegration back into society in a safe way.

At present in Queensland, there are around 740 patients who are under forensic orders, the vast majority of whom are accessing Limited Community Treatment (LCT).[2] Most of these patients are not living in in-patient units; many have jobs or are studying at university and TAFE; some are living in community treatment facilities, others with their families. Many will go on to recovery and discharge from forensic mental health treatment.

LCT is an accepted standard of clinical practice, in Australia and internationally. It assists patients to reintegrate into the community and aids in their recovery by building social and economic skills. The primary decision about whether or not to undertake LCT is a clinical matter which should be decided by a patient and his or her treating clinician, supported and approved by safeguards within the forensic mental health system.

In Queensland, LCT is subject to strict checks and balances and there are very low rates of patients being absent without permission.

LCT in Queensland has a low risk profile and is subject to strict eligibility criteria. Before LCT is granted in Queensland, a rigorous process for determining suitability is undertaken. Patients must first be assessed by their treating clinicians, who are specialists in forensic mental health, for both clinical efficacy and risk to the community. The decision to grant LCT, and attached conditions, must then be approved by the Limited Community Treatment Review Committee and the Mental Health Review Tribunal (and can be revoked by the Mental Health Court if appealed by the Attorney General). LCT may be withdrawn by treating clinicians at any time.

AMA Queensland considers that it is essential that existing safeguards, like the Mental Health Tribunal and the Mental Health Court, and existing treatment options, are adequately resourced before funding is redirected to costly monitoring programs.

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[2] Public briefing on the Queensland Mental Health Commission Bill 2012 and Health Practitioner Registration and Other Legislation Amendment Bill 2012. *Health and Community Services Committee - Queensland Mental Health Commission Bill 2012 inquiry*, p6. <http://www.parliament.qld.gov.au/documents/committees/HCSC/2012/QldMtlHlthComBil2012/121217-PBT-QldMtlHlth.pdf> at 1 February 2013.

AMA Queensland considers a balance should be struck between the safety of the community and the effective treatment, recovery and rehabilitation of forensic, classified and s273(1)(b) patients.

Some forms of monitoring of patients whilst on LCT, for example, regular phone calls to the treatment facility or a detailed plan of the patient's movements whilst on LCT, will not necessarily pose a risk to their treatment and recovery. However, any decision to impose monitoring conditions on a patient must be made in collaboration with the patient's treating clinicians, who best understand the potential impact of monitoring conditions on the patient.

Before making a monitoring order, the Director should be required to make an assessment of the impact that any monitoring will have on the treatment and recovery of a patient. The Director must then take this into account when deciding what level of monitoring to impose on a particular patient.

AMA Queensland opposes the use of monitoring devices in the mental health system

Forensic and s273(1)(b) patients have not been convicted of a crime. They are patients in a treatment facility and have a mental illness.

AMA Queensland considers that the use of monitoring devices will expose mental health patients to stigma and may pose a significant risk to their recovery and treatment. The effect of monitoring devices would be punitive. AMA Queensland believes that punishment has no role to play in the forensic mental health system and opposes the use of monitoring devices in that system.

Further, AMA Queensland is aware of no research which suggests that the use of monitoring devices for forensic patients increases public safety.

In addition, the use of monitoring devices may breach the terms of the *United Nations convention on the rights of persons with disabilities*[3] and the *United Nations principles for the protection of people with mental illness and for the improvement of mental health care,*[4] and the *National Statement of Principles for Forensic Mental Health Services.*[5]

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[3] Article 4 General Obligations, Article 5 Equality and Non Discrimination, Article 26 Habilitation and Rehabilitation – opened for signature 30 March 2007, 2515 UNTS 3, (entered into force 3 May 2008).

[4] Principle 8 Standards of Care and Principle 9 Treatment - these principles, while not formally binding, serve as influential aids in the interpretation of treaty obligations - Adopted by General Assembly resolution 46/119 of 17 December 1991.

[5] Principle 1 Equivalence, Principle 7 Ethical issues, Principle 9 Individualised Care, Principle 13 Legal Reform/Issues - *National Statement of Principles for Forensic Mental Health* (2006) Australian Health Ministers' Advisory Council (endorsed 2002) <http://www.health.gov.au/internet/mhsc/publishing.nsf/Content/EA8277CBEE4D16B2CA257A5A0081C323/$File/forens.pdf> at 4 February 2013.

If monitoring devices are to be used, their use must be subject to strict oversight.

AMA Queensland does not support the use of monitoring devices. However, if a decision to use them is made, their use must be only in limited circumstances and under strict oversight. This oversight must be undertaken by the judicial arm of government, as the use of monitoring devices represents a significant imposition on a patient's personal integrity and social mobility and may pose a risk to their treatment and recovery. Any monitoring should be conducted within the health system.

In Queensland, tracking devices are only authorised for use on non-prisoners under the *Dangerous Prisoner (Sexual Offenders) Act* 2003. The use of these devices is so invasive that the approval of the Supreme Court is needed and must be reviewed regularly.

If any such monitoring mechanism were to be used in the forensic mental health system, monitoring devices should only be used for patients who have committed actions, for which, if they were not subject to a forensic order, they may have been charged with crimes covered by the *Dangerous Prisoner (Sexual Offenders) Act* 2003.

In addition, similar checks to the *Dangerous Prisoner (Sexual Offenders) Act* 2003 should be put in place; for example, the approval and regular review of their use by the Mental Health Court.

Suspension of LCT by the Director of Mental Health for a particular patient or class of patients

The Mental Health Review Tribunal and the Mental Health Court make decisions about LCT for patients on an individual basis – taking into account their individual circumstances and the risk that allowing LCT may pose in a particular case. Suspension of LCT for a 'class' of patients is contrary to principles of natural justice and may negatively impact the recovery of patients.

However, AMA Queensland considers that there may be some limited and emergency circumstances where suspension of LCT for a class of patients may be necessary. The power of the Director of Mental Health to suspend LCT must be subject to strict and short time limits (for example, 7 days) before it lapses or must be reviewed and approved by the Mental Health Tribunal or the Mental Health Court. Any suspension of LCT by the Director must be no more than is necessary to reduce community risk to an acceptable level.

In addition, patients should be allowed to appeal a decision in relation to this section on the basis that, although they fall into a particular class of patients, they themselves do not pose a significant risk to the community.