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Queensland Public Interest Law Clearing House Incorporated

Submission on The Queensland Mental Health Commission Bill 2012

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Prepared by the Queensland Public Interest Law Clearing House Incorporated

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Introduction

The Queensland Public Interest Law Clearing House Incorporated (**QPILCH**) coordinates a range of legal services which provide people experiencing disadvantage with access to justice in civil law matters, drawing on pro bono and student resources.

Through the Mental Health Law Practice, we provide a range of specific legal services to people with mental illness who have particular difficulty in accessing legal services.

Through the Mental Health Law Clinic and the Mental Health Law and Advocacy Service, we provide clients with free information and advice about the Mental Health Act and the Mental Health Review Tribunal process. We also have a panel of advocates to assist clients at their Tribunal hearings.

We also partner with law firms to deliver direct client civil law services to people with mental illness through outreach at community organisations accessed by people with mental illness.

The Queensland Mental Health Commission Bill

QPILCH supports the broad thrust of the Queensland Mental Health Commission Bill (**the Bill**) and its objectives and principles and commends the government on this important reform.

Nonetheless, we are concerned that funding for direct clinical and support services should not be overlooked. Media reports of Health Department budget cuts, if realised, are potentially incompatible with the objectives and principles of the Bill and could adversely impact on the mental health of patients.

The ambitious and worthy goals of the Bill cannot be realised without adequate and urgent funding to the services that directly affect people with mental illness and we urge the Government to ensure that funding to establish the new Commission does not come at the expense of direct client services and that the impact of any funding cuts on mental health services be reviewed at the earliest opportunity.

The rest of this submission is directed at the proposed amendments to the Mental Health Act included in the Bill.

Amendments to the Queensland Mental Health Act

Power to impose monitoring conditions

Section 62 of the Bill introduces a new provision, section 131A in the Mental Health Act allowing the Director of Mental Health to impose monitoring conditions on certain categories of patients on limited community treatment.

We appreciate that the decision to permit limited community treatment for the three categories of patients referred to in Part 9 of the Bill (classified patients, forensic patients and patients for whom the Mental Health Court has made an order under section 273(1)(b)) can raise difficult issues in ensuring public safety while preserving individual rights of patients.

We are concerned, however, that the proposal, in its current form, does not achieve the appropriate balance, is disproportionate to the risk and does not contain sufficient safeguards to ensure the rights of patients. Although we have not been able to obtain exact figures, it is our understanding that there is a very low rate of absconding of patients. The two recent cases, referred to in the explanatory notes to the Bill, though serious, are the exception rather than the norm.

The proposed amendment goes farther than legislation in any other State in giving the Director of Mental Health broad and unfettered discretion to impose conditions.

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.

In our view, clear guidelines and limits to the power should be specified in the Act, consistent with the principles of accountability and transparency which are referred to in the Bill.

Without such guidelines, the appeal right given to patients is essentially meaningless. It would be difficult for a patient to argue, for example, that a condition was wrongly imposed or took into account "irrelevant considerations" if there is there are no constraints on the exercise of the power.

Further, while it may be practical and reasonable that the Director of Mental Health be given power to impose non-punitive monitoring conditions such as telephone reporting and perhaps travel restrictions, it is envisaged that the Director can also order physical monitoring devices such as ankle monitors. It is worrisome that this type of punitive condition (similar to parole conditions) could be imposed on people who have been found

by the Courts to **not** to be criminally responsible for their actions, either because they are permanently unfit for trial or because they were deemed insane at the time the offence was committed.

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.

In our view, imposing such a condition 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, among other things, include that people under the Act should have the same human rights as other people and that

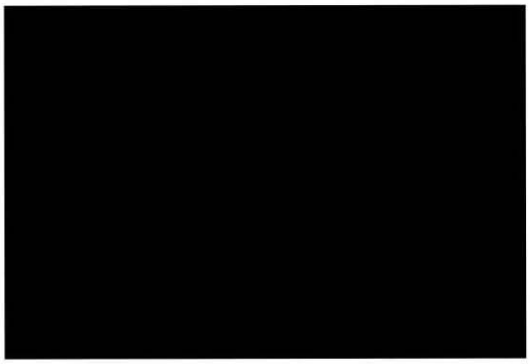
> "to the greatest extent practicable, a person is to be helped to achieve maximum physical, social, psychological and emotional potential, quality of life and self-reliance" (Section 8(d) Mental Health Act 2000).

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 but should **only** be made with judicial authority (ie by the Mental Health Review Tribunal or the Mental Health Court).

QPILCH is also concerned that the cost of implementing monitoring devices which we understand cost approximately $3000 per device and the impact of this on other services.

Finally, we support the establishment of the Queensland Mental Health Commission and the emphasis on a "holistic approach" but the monitoring conditions are potentially inconsistent with this goal and will potentially draw resources from direct service resources which have already been impacted by funding cuts to the health budget.



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