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Committee Secretary  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
BRISBANE Qld 4000

Via email to: [lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)

Dear Committee Secretary

**The Queensland Mental Health Commission welcomes the opportunity to provide a submission to the Inquiry into the *Human Rights Bill 2018*.**

The Commission's submission is attached for the Committee's consideration.

Please contact Mr Stefan Preissler, Manager via email [REDACTED] or phone [REDACTED] if you have any questions.

Yours sincerely



**Ivan Frkovic**  
**Commissioner**  
**Queensland Mental Health Commission**

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## **Inquiry into the Human Rights Bill 2018**

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Submission to the Legal Affairs and Community Safety Committee by the  
Queensland Mental Health Commission

November 2018

## 1. The Queensland Mental Health Commission

The Queensland Mental Health Commission (the Commission) is an independent statutory agency established under the *Queensland Mental Health Commission Act 2013*, (the Act).

It was established to drive ongoing reform towards a more integrated, evidence-based and recovery-oriented mental health and substance misuse system. In exercising its functions under the Act, the Commission must focus on systemic mental health and substance misuse issues<sup>1</sup>.

The Commission promotes policies and practices that are aligned to the vision in the *Queensland Mental Health, Alcohol and Other Drugs Strategic Plan 2018-2023* (Strategic Plan) for a fair and inclusive Queensland, where all people can achieve positive mental health and wellbeing and live their lives with meaning and purpose.

The Commission works in four main ways:

- developing a whole-of-government strategic plan for improving mental health and limiting the harm associated with problematic alcohol and other drug use;
- undertaking reviews and research to inform decision making, build the evidence base, support innovation and identify good practice;
- facilitating and promoting mental health awareness, prevention and early intervention; and
- establishing and supporting state wide mechanisms that are collaborative, representative, transparent and accountable.

The work of the Commission is supported by the independent Queensland Mental Health and Drug Advisory Council which acts as a champion for people living with mental health issues, problems related to alcohol and other drug use, or impacted by suicide.

The Council was established by the *Queensland Mental Commission Act 2013*.

The Council's functions are to:

- provide advice to the Commission on mental health or substance misuse issues either on its own initiative or at the Commission's request; and
- make recommendations to the Commission regarding the Commission's functions.

This submission incorporates feedback from both the Commission and Council members.

## 2. Overview

The Commission and members of the Queensland Mental Health and Drug Advisory Council welcome the introduction of the *Human Rights Bill 2018* into the Queensland Parliament. We commend the Government for taking this important step to improve the human rights protection for all Queenslanders, especially some of the most vulnerable people living with mental illness and/or problematic alcohol and other drug use.

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<sup>1</sup> Section 11(2)(a) of the Queensland Mental Health Commission Act 2013

We also commend and acknowledge the people involved in the campaign for a Human Rights Act for Queensland. Over 40 community organisations and thousands of Queenslanders have over many years lobbied the Government to introduce legislation to ensure a fairer and more equal society.

Protection of human rights is fundamental to supporting recovery of people living with mental health problems, mental illness, and alcohol and other drug use. It enables individuals to be socially included, be safeguarded from discrimination and to live with dignity and purpose through participation in education, employment and access to services such as health and housing services.

The Commission and Council members welcome the protection of cultural rights in the Bill, especially cultural rights of Aboriginal people and Torres Strait Islanders; and those of cultural and linguistically diverse backgrounds.

This approach is consistent with the third pillar of focus area 3 'Whole of System Improvement' of the *'Shifting Minds Queensland Mental Health, Alcohol and Other Drugs Strategic Plan – 2018-2023'* and accords with Queensland government commitments and governance arrangements as they relate to the Gayaa Dhuwi (Proud Spirit) Declaration and the Framework for Mental Health in Multicultural Australia: Towards culturally inclusive service delivery.

We are also pleased to see the "Protection from torture and cruel, inhuman or degrading treatment"; the right to "Humane treatment when deprived of liberty"; and the "Right to health services" specifically mentioned amongst the 23 human rights protected in the Bill. Collectively, we also support the proposed dispute resolution process and functions of the Queensland Human Rights Commission. We acknowledge that this is a significant improvement on the *Victorian Charter of Human Rights and Responsibilities Act 2006*.

However, adequate resources must be provided to the Human Rights Commission to support the operation and implementation of the Act.

We raise a concern whether the "opt-in" option provided in clause 60 of the Bill is sufficient to ensure, for example, the human rights protection of people being treated in private hospital settings. The Bill as it currently stands only applies to public entities, such as public hospitals, but not to private hospitals. The same applies to private schools. We suggest the Bill should include non-public entities that receive Government funding and provide services similar to those provided by public entities.

### **3. Previous support for a Human Rights Act for Queensland**

The Commission has supported a Human Rights Act for Queensland since 2015-16 when the Queensland Parliament Legal Affairs and Safety Committee held a Human Rights Inquiry into whether Queensland should have a Human Rights Act.

The Commission's submission to the Parliamentary Committee, A Human Rights Act for Queensland<sup>2</sup> focused on the need to better protect the human rights of all Queenslanders, and particularly people living with mental illness and/or problematic alcohol and other drug use.

The Commission's submission supported a Human Rights Act for Queensland that:

- better enables people to enforce their human rights;
- includes economic, social and cultural rights, such as adequate healthcare, education and housing; and
- applies to not only government agencies, but also organisations funded by Government to deliver services.

The submission recognised that legislation sets the ground work for protecting human rights, but more is needed to change cultures and entrenched views which result in discrimination, unconscious bias and stigma.

This requires investment in educational resources to support understanding of human rights amongst individuals, parliamentarians, the legal sector and government agencies; and to promote a human rights culture in Queensland.

The Commission further recommended that people with lived experience are involved in the design of any human rights legislation. We advised that safe language guidelines and patient care protocols be applied in the drafting of the legislation and associated policy documentation to ensure appropriate terminology and safe, non-stigmatising wording is used.

The Commission initially developed a Background Paper on A Human Rights Act for Queensland<sup>3</sup> canvassing the views of people who experience mental illness, and the implications and opportunities of a Human Rights Act.

The Commission is pleased to see that most of its recommendations have been incorporated in the Bill.

#### **4. Queensland Mental Health, Alcohol and Other Drugs Strategic Plan 2018-2023**

The Government recently approved the whole-of-Government *Queensland Mental Health, Alcohol and Other Drugs Strategic Plan 2018-2023*. The Strategic Plan was launched by the Minister for Health and Minister for Ambulance Services the Hon Dr Steven Miles MP at the Leading Reform Summit, organised by the Commission, on 21 November 2018.

Respect for human rights and dignity is one of the guiding principles of the Strategic Plan. Strengthening human rights protections is a key focus area given that people with a lived

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<sup>2</sup> <https://www.qmhc.qld.gov.au/sites/default/files/wp-content/uploads/2016/04/Submission-to-the-Queensland-Human-Rights-Inquiry.pdf>

<sup>3</sup> [https://www.qmhc.qld.gov.au/sites/default/files/wp-content/uploads/2016/04/BACKGROUND-PAPER\\_Human-Rights-Inquiry.pdf](https://www.qmhc.qld.gov.au/sites/default/files/wp-content/uploads/2016/04/BACKGROUND-PAPER_Human-Rights-Inquiry.pdf)

experience in mental illness and problematic alcohol and other drug use are more likely than other Queenslanders to have their human rights violated through the use of seclusion and restraint, indefinite detention and the loss of personal and parental rights.

The Strategic Plan includes the following priority actions:

- Promoting and monitoring least restrictive practices in policy and legislation, reduce restrictive practice, and improve responses to human rights complaints.
- Align the *Mental Health Act 2016* with the proposed Queensland human rights legislation.

The Commission and the Advisory Council will continue to advocate for a review of the policy of locking mental health wards in Queensland in view of the impact locked wards have on the human rights of both voluntary and involuntary patients.

In December 2013, a directive was issued by Queensland Health that all public acute mental health wards were to be locked across Queensland. The reasons provided related to the risks of inpatients being absent without permission, and concerns for community safety.

On the question of locked wards, the Commission has advocated for flexible, localised-decision making with structured review. This allows management to take into account the milieu of patients on the ward and the specific operational circumstances where it may be necessary to lock a ward, balanced by the responsibility to effectively communicate to all patients, including advising the timeframe the ward will be locked, and the timeframe for review.

## **5. Relevant Commission Research Projects**

### **5.1 Human Rights**

The Commission funds research and supports reforms for a more recovery-oriented and human rights focused mental health, alcohol and other drugs system in Queensland, including new mental health laws and protections.

In 2017, we commissioned a research project to investigate:

- to what extent processes provided in the *Queensland Mental Health Act 2016* protect the human rights of people who receive involuntary treatment in hospital and community settings;
- how these processes compare to other Australian States and Territories;
- whether these processes are working in practice; and
- the practical experience with the processes under the new Act of people living with mental illness, and their family members, carers and support persons.

The following five areas are part of the project:

- the role of Independent Patient Rights Advisors;

- the operation of the Mental Health Review Tribunal;
- Advance Health Directives;
- rights and information for inpatients within mental health wards; e.g. community visitors; and
- rights and information regarding involuntary treatment in the community.

Research findings will be submitted to the Commission in early 2019.

## 5.2 Stigma and discrimination

There is a need to better protect the human rights of people experiencing alcohol and other drug use. The World Health Organisation notes that illicit drug dependence is the most stigmatised health condition in the world<sup>4</sup>. Research<sup>5</sup> conducted on behalf of the Commission supports evidence that experiences of stigma and discrimination are a common occurrence in the everyday lives of people with a lived experience of problematic alcohol and other drug use.

Respect for human rights is fundamental to supporting recovery of people experiencing problems with alcohol and other drug use. Those rights include, but are not limited to: a right to respect and dignity as an individual, prohibition of inhuman or degrading treatment, and equitable access to health care of appropriate quality.

Structural factors that influence stigma and discrimination include legislation, and organisational policies and practices. The law articulates societal values and norms. A Human Rights Act is one mechanism through which widespread structural stigma and discrimination can be alleviated, and the potential for stigma or discrimination in the implementation of laws that do not clearly define the targeted practices, activities or behaviours.

In March 2018, the Commission published an *Options for Reform report — Changing attitudes, changing lives: options to reduce stigma and discrimination for people experiencing problematic alcohol and other drug use*<sup>6</sup>. The evidence-based report outlines 18 options for reform regarding systemic issues to address stigma and discrimination for people experiencing problematic alcohol and other drug use, and their families. It is

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<sup>4</sup> Kelly, J.F. & Westerhoff, C.M., *Does it matter how we refer to individuals with substance-related conditions? A randomized study of two commonly used terms*. International Journal of Drug Policy, 2010. **21**(3): p. 202-207.

<sup>5</sup> Lancaster, K.L., Seear, K. & Ritter, A., *Reducing stigma and discrimination for people experiencing problematic alcohol and other drug use: a report for the Queensland Mental Health Commission* (2017). Available at: <https://www.qmhc.qld.gov.au/research-review/stigma-discrimination/alcohol-other-drugs-stigma>.

<sup>6</sup> *Changing attitudes, changing lives: options to reduce stigma and discrimination for people experiencing problematic alcohol and other drug use* is available at: <https://www.qmhc.qld.gov.au/research-review/stigma-discrimination/alcohol-other-drugs-stigma>

intended to encourage policy discussion and enhance understanding of the prevalence and impacts of stigma and discrimination.

Two of the 18 options are of direct relevance to this Inquiry:

- Option 1: The Queensland Government progress the introduction of a Human Rights Act for Queensland.
- Option 10: Health care service providers identify the rights and responsibilities they have adopted, and how they are promoted to people accessing their services, their staff, and their organisation as a whole. Should gaps be identified, develop and promote a statement of rights and responsibilities, ensuring that they are inclusive of people experiencing problematic alcohol and other drug use. An active awareness and promotion campaign should accompany the statement of rights and responsibilities to ensure that people who access the service can enact their rights.

The Commission is working with key stakeholders to monitor the uptake of the options for reform and will publicly report on progress in 2019.

The Commission notes that problematic alcohol and other drug use can lead to disability for some people, for example cognitive impairments or physical disability. We note that under the Federal Disability Discrimination Act it is against the law to discriminate against a person because of disability. Provisions such as these should be reflected and maintained within a Human Rights Act.

## 6. Conclusion

The Commission and Advisory Council members are pleased to see a Human Rights Act for Queensland becoming a reality.

We believe human rights legislation together with the implementation Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) currently underway will improve human rights protections for all Queenslanders.

A Human Rights Act will give a voice to some of the most vulnerable people living with mental illness and/or problematic alcohol and other drug use. It will also provide additional human rights protection for Aboriginal and Torres Strait Islander people, people living with a disability, people of the LGBTIQ+ community, people who are homeless or at the risk of homelessness, people from culturally and linguistically diverse communities, children and young people, the elderly, and people experiencing domestic violence.

The Commission will work with its partners in the Government and non-Government sector to achieve the cultural change towards respecting human rights as intended by the *Human Rights Bill 2018*.